

## AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT

**THIS AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT** (“Restated PSA”) is entered into and is effective as of the Effective Date (as defined in Section 2.7 below) by and between the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation, on behalf of its enterprise, Colorado Springs Utilities (“Utilities”), and Thaddeus Wertz and Sierra Wertz (collectively “Seller”). Utilities and Seller may be referred to herein, individually, as a “Party”, and, collectively, as the “Parties”.

### RECITALS

**A. WHEREAS**, Seller owns certain real property in Bent County, Colorado, located on the southeast corner of the intersection of Highway 50 and Bent County Road 15 and legally described on Exhibit A, hereto (the (“Farm”));

**B. WHEREAS**, Utilities and Seller entered into that certain Purchase and Sale Agreement dated June 1, 2022 (“Original PSA”) under which Seller agreed to: 1) sell Utilities eighty (80) of the two hundred seventy-two and nine tenths (272.9) shares in the Fort Lyon Canal Company (“FLCC”) currently represented by stock certificate number 10350 that were historically used to irrigate the parcel corners of the Farm (“Corner Shares”); 2) enter into an agreement granting Utilities the right to make the historical consumptive use associated with one hundred and five (105) of the remaining FLCC Shares under certificate number 10350 (“ATM Shares”) available for its uses in three out of every ten years in perpetuity (“Water Sharing Agreement”); and (3) grant Utilities easements necessary to construct and operate return flow and augmentation facilities to ensure that the water attributable to the Corner Shares and the ATM Shares can be delivered to the FLCC ditch system and/or the Arkansas River and its tributaries (“Augmentation and Return Flow Easements”).

**C. WHEREAS**, Seller has requested that the Water Sharing Agreement component be removed from the transaction under the Original PSA; and

**D. WHEREAS**, Utilities is willing to enter into this Restated PSA amending the Original PSA to remove the Water Sharing Agreement component from the transaction subject to approval by the Colorado Springs City Council; and

**E. WHEREAS**, the Corner Shares, and the Return Flow and Augmentation Facility Easements are collectively referred to as the “Purchased Property” herein;

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### TERMS AND CONDITIONS

1. The above recitals are hereby incorporated into the terms and conditions of this Restated PSA as if fully set forth herein.

**2. Definitions.** For the purposes of this Restated PSA, the following terms shall have the following meanings, unless the context clearly requires otherwise:

2.1 “Closing” means those activities described herein that are required to complete the purchase and sale of the Purchased Property from Seller to Utilities.

2.2 “Closing Date” means on or before February 15, 2023, unless otherwise mutually agreed in writing by the Parties, and is the date by which all Closing activities will be completed.

2.3 “Closing Deliveries” means those items Seller and Utilities are required to deliver to the Title Company under Sections 8.4 and 8.5, respectively.

2.4 “Corner Shares” means eighty (80) of the FLCC Shares that will be assigned to the Parcel Corners.

2.5 “Corner Share Water Rights” means the water rights represented by the Corner Shares and all beneficial rights, title, and interests in all water, water rights, ditches, ditch rights, reservoirs, reservoir rights, canals, canal rights, headgates, and all other assets, rights, title, or interests derived from or represented by the Corner Shares.

2.6 “Dry-Up Covenant” means a legal document signed by Seller attesting that the Corner Shares and Corner Share Water Rights are no longer required, and will no longer be used, for irrigation or watering of the Farm and that the portions of the Farm no longer irrigated by the Corner Shares are dried-up, as necessary.

2.7 “Effective Date” means the last date on which this Restated PSA has been mutually executed by Utilities and Seller.

2.8 “FLCC” shall mean The Fort Lyon Canal Company, a Colorado non-profit corporation.

2.9 “Purchase Price” means the price agreed to between Utilities and Seller in Section 4 of this Restated PSA for the purchase and sale of the Purchased Property.

2.10 “Title Company” means a third party selected by Utilities pursuant to Section 8.6 below who will hold funds and documents in pending completion of Closing, in accordance with this Restated PSA.

**3. Supersedes Previous Purchase and Sale Agreement.** The Parties agree that upon its effective date, this Restated PSA supersedes and replaces in full the Original PSA and any amendments or addendums thereto.

**4. Sale and Purchase.** Subject to the terms and conditions of this Restated PSA, Seller hereby agrees to sell and Utilities agrees to purchase the Purchased Property, and any other

interests in real or personal property of Seller represented by or derived from ownership of the Purchased Property.

**5. Purchase Price.**

5.1 Purchase Price. The Purchase Price for Purchased Property and Seller's covenants and obligations hereunder to be paid at Closing, subject to the terms and conditions of this Restated PSA, is:

Corner Shares Price Per Share: \$6,500.00

Number of Corner Shares: 80

Purchase Price for Corner Shares: \$520,000.00

On the Closing Date, provided the PSA has not been terminated in accordance with Sections 6.1, 6.2, 6.3, 7.3, 7.4, 8., and 14 (or becomes null and void pursuant to Section 15), and upon satisfaction of all Closing Contingencies in Section 8.1 below and receipt of Seller's Closing Deliveries in Section 8.4 below, the Title Company shall remit the total Purchase Price to Seller, subject to satisfaction of any financial encumbrances as required to deliver marketable title, free, clear and unencumbered, to the Corner Shares and the Corner Share Water Rights to Utilities.

5.2 Administrative Settlement. Utilities shall deliver to the Title Company on or before Closing sufficient funds to reimburse Seller's reasonable expenses associated with preparing this Restated PSA, the Operations Agreement, and any other documents necessary for consummating the transaction contemplated by this Restated PSA as an administrative settlement ("Administrative Settlement"). The Administrative Settlement shall not exceed \$20,000.00. In order to receive the Administrative Settlement, Seller must provide invoices or receipts for each such expense to Utilities and Title Company at least five (5) business days prior to the Closing Date.

**6. Title.**

6.1 Corner Shares. The Parties agree that in order to consummate the transaction contemplated by this Restated PSA, marketable title to the Corner Shares must be held by Seller so that Seller may convey marketable title to the Corner Shares to Utilities free, clear, and unencumbered, and Utilities' obligations under this Restated PSA are specifically conditioned and contingent on Seller possessing such title prior to Closing. Notwithstanding any other provisions of this Restated PSA, if Seller does not have such marketable title in the Corner Shares as of the Closing Date, Utilities may terminate this Restated PSA by providing notice to Seller. In the event of such termination, Utilities and Seller shall be relieved of all obligations under this Restated PSA.

6.2 Dry-Up Covenants. The Parties agree that Seller must have sufficient right, title, and interest in the Farm so as to be able to deliver sufficient and appropriate Dry-Up Covenants that will be subject only to those matters of title approved by Utilities prior to Closing. Notwithstanding any other provisions of this Restated PSA, if Seller is unable to deliver satisfactory Dry-Up Covenants, as required in Section 8.1.3, to Utilities as of the Closing Date, Utilities may terminate this Restated PSA by providing notice to Seller. In the event of such termination, Utilities and Seller shall be relieved of all obligations under this Restated PSA.

6.3 Farm. The Parties agree that in order to consummate the transaction contemplated by this Restated PSA, Seller must own the Farm in fee simple so that the Center Pivot Sprinklers can be installed, the Parcel Corners can be removed from irrigation, and the necessary easements, encumbrances and restrictions can be placed on the Farm, and that Utilities' obligations under this Restated PSA are specifically conditioned and contingent on Seller possessing such title prior to Closing. Notwithstanding any other provisions of this Restated PSA, if Seller does not own the Farm in fee simple as of the Closing Date, Utilities may terminate this Restated PSA by providing notice to Seller. In the event of such termination, Utilities and Seller shall be relieved of all obligations under this Restated PSA.

## 7 Due Diligence.

7.1 Due Diligence. Utilities shall have up to and including December 30, 2022 (the "Due Diligence Period") to perform, at its expense, due diligence on the Purchased Property and the Farm ("Due Diligence"). Due Diligence may include, but is not limited to, investigating the title to the Corner Shares and the Farm; investigations and inspections of the Farm; appraisal of the Corner Shares; HCU analysis of the Corner Share Water Rights; review of encumbrances against the Corner Shares and the Farm; review of contracts related to the Corner Shares or the Farm; and environmental site assessments of the Farm. To the extent they are able, Seller shall provide Utilities, its agents and contractors, reasonable access to the Farm to perform such Due Diligence.

7.2 Due Diligence Documents. On or before the date that is ten (10) days after the Effective Date, Seller shall deliver to Utilities complete and legible copies of all documents or reports in the possession of Seller or Seller's agents, engineers, and/or consultants, or under Seller's control, or otherwise reasonably available to Seller or Seller's agents, engineers, and/or consultants including without limitation the following to the extent that such documents exist: (1) a complete copy of the certificates for the Corner Shares (front and back); (2) a legal description of the Farm and the Parcel Corners, if available; (3) for any share or share certificate of the Corner Shares that is held or issued in the name of Seller or of some other person or entity, proof of Seller's authority to assign and convey the other named person's or entity's interest in the Corner Shares; (4) for any share or share certificate of the Corner Shares that is held or issued in the name of Seller and of an encumbrance holder, a copy of any deed of trust, mortgage, pledge, lien, or other encumbrance on the Corner Shares, together with (a) proof of the prior release of the encumbrance on the Corner Shares, or (b) a written statement from the encumbrance holder

stating (i) the amount of any payment required to be made to allow the release of the encumbrance on the Corner Shares, and (ii) that it will release any encumbrance upon the Corner Shares at Closing; (5) documents describing the Corner Share Water Rights; (6) such other documents as Utilities may reasonably request to prove that Seller owns the Corner Shares and can deliver the same free and clear of all encumbrances at Closing; (7) a copy of any and all documents (such as leases) establishing or identifying possessory interests held by third parties in the Farm, the Corner Shares or the Corner Share Water Rights that are in Seller's possession, and written disclosure of any such document of which Seller have knowledge but not possession; (8) information and documents concerning the historical use of the Corner Share Water Rights including the historical consumptive use and the historical stream depletions of such water rights; (9) any title commitments, title opinions, title abstracts, surveys, drawings, legal descriptions, aerial or other photographs related to the Corner Shares, the Corner Share Water Rights, and/or the Farm; (10) any reports evaluating the Corner Shares, the Corner Share Water Rights, or any diversion records or engineering reports, court decrees, administrative agency documents, or appraisals pertaining to the Corner Shares or the Corner Share Water Rights; (11) any operating agreements and/or ditch agreement related to the Corner Shares or Corner Share Water Rights; (12) any and all communications regarding the Corner Shares and the Corner Share Water Rights, with a ditch company or a state agency; and (13) any engineering reports, engineering design, cost estimates, bids, or other documentation regarding the infrastructure used with respect to the Corner Shares, or the Corner Share Water Rights, (collectively the "Due Diligence Documents"). The Due Diligence Documents shall also include any information known to Seller or in Seller's control or possession or which may be reasonably obtained by Seller related to future or expectant encumbrances on the Corner Shares and/or the Farm and encumbrances that will come into being upon Seller taking title to the Farm, and the Corner Shares. During the Due Diligence Period, Seller shall cooperate with Utilities to have a land survey plat of the Farm and an as built survey of the Center Pivot Sprinklers prepared by a professional land surveyor at Utilities cost at least thirty (30) days prior to the expiration of the Diligence Period. The surveys will be considered Due Diligence Documents. In addition, if Seller comes into possession or control or receives knowledge of any Due Diligence Documents that have not been disclosed to Utilities, Seller will provide copies of such Due Diligence Documents to Utilities within three (3) business days of such Due Diligence Documents coming into Seller's possession and/or control. Seller will request copies of any such information not within Seller's possession or control within three (3) business days of becoming aware of such Due Diligence Documents.

7.3 Objections. Utilities shall have the right to object, in its sole subjective discretion, by providing written notice to Seller (each a "Notice of Objection") to any title defect or other unsatisfactory condition revealed by Due Diligence and/or the Due Diligence Documents (each an "Objection") before expiration of the Due Diligence Period or if Seller provides a Due Diligence Document to Utilities after the expiration of the Due Diligence Period, then Utilities may provide such Notice of Objection within ten (10) business days of receiving such Due Diligence Document(s) from Seller. In the event of a Notice of Objection, Seller shall have ten (10) days from the receipt of notice within which to take such actions (if any) which Seller deems appropriate to cure such Objections.

Utilities' failure to deliver a Notice of Objection within the time periods described in this Section 7.3 shall be deemed to establish Utilities' satisfaction with any title commitments, surveys, Due Diligence and Due Diligence Documents. If at the end of Seller's cure period Seller has not corrected to Utilities' satisfaction the Objections, Utilities may (1) waive its Objections and consummate the transaction without a reduction in the Purchase Price, (2) extend Closing for a reasonable period of time for Seller to correct the Objections, if Seller confirms to Utilities in writing that Seller intends to continue to diligently pursue the necessary corrective action or (3) terminate this Agreement. In the event of such termination, Utilities and Seller shall be relieved of all obligations under this Restated PSA.

7.4 Termination during Due Diligence Period. Notwithstanding any other provisions of this Restated PSA, Utilities, in its sole subjective discretion, may terminate this Restated PSA at any time during the Due Diligence Period by providing notice to Seller prior to the expiration of the Due Diligence Period. In the event of such termination, Utilities and Seller shall be relieved of all obligations under this Restated PSA.

## 8 Closing.

8.1 Closing Contingencies. The Parties agree that in order to consummate the transaction contemplated by this Restated PSA, the following must occur (collectively the "Closing Contingencies") prior to or at Closing:

8.1.1 Resolution of Objections: A written Resolution of Objections to any Notice of Objections provided by Utilities, if any.

8.1.2 Operations Agreement. Utilities and Seller will enter into an operations agreement (the "Operations Agreement") substantially in the form attached hereto as Exhibit B.

8.1.3 Dry-Up Covenants. Utilities and Seller will enter into dry-up covenants (the "Dry-Up Covenants") substantially in the form attached hereto as Exhibit C. The Dry-Up Covenants will be recorded in the real property records of Bent County, Colorado.

8.1.4 Return Flow and Augmentation Facility Easements. Seller shall grant easements to Utilities, in a form substantially the form attached hereto as Exhibit D (the "Return Flow Easements") In the event the location of the Return Flow Easements cannot be determined prior to Closing, the Return Flow Easements will be blanket easements covering the entire Farm parcel(s) and will include a mechanism and timeline for reducing the size of the Return Flow Easements to locations on the Farm where the facilities will be located once built. The Return Flow Easements will be recorded in the real property records of Bent County, Colorado.

8.1.5 FLCC Approval. The transfer of ownership of the Corner Shares from Seller to Utilities as contemplated by this Restated PSA must be approved in writing by the FLCC Board of Directors, in their discretion, to the extent that the FLCC articles of incorporation, bylaws, or other rules and regulations give the FLCC Board of Directors approval authority over the transaction contemplated by this Restated PSA.

8.1.6 City Council Approval. The transaction contemplated by this Restated PSA must be approved by the City Council of the City of Colorado Springs, Colorado ("City Council), in the City Council's sole discretion, by resolution at least ten (10) days prior to Closing. If the City Council does not approve the transaction, the Parties will mutually agree to either close on the transaction by the Closing Date under the terms of the Original PSA or terminate this Restated PSA.

8.1.7 Historic Consumptive Use Analysis. Utilities will conduct an analysis of the HCU of the Corner Shares and the Corner Share Water Rights, as part of its Due Diligence. Utilities, in its sole discretion, must be satisfied with the results of this historic consumptive use analysis of the Corner Shares and the Corner Share Water Rights to complete the transaction contemplated by this Restated PSA.

8.1.8 Installation of Center Pivots. Seller has installed the Center Pivot Sprinklers on the Farm in locations agreed to by the Parties.

8.2 Utilities' Obligation to Close. Utilities' obligation to close the transaction contemplated in this Restated PSA is contingent on the satisfaction or Utilities' waiver of the Closing Contingencies. If these Closing Contingencies are not met or waived by Utilities as of the Closing Date, then the Parties may agree to delay Closing for a mutually agreed upon period of time, or Utilities may terminate this Restated PSA by providing notice to Seller in which case neither Party shall have any further obligations under this Restated PSA. In the event not all Closing Contingencies are satisfied, Utilities shall provide written notice of the satisfaction, rejection, or waiver of each of the Closing Contingencies not yet satisfied on or before the date that is two (2) business days prior to the Closing Date. Utilities' failure to provide notice with respect to any of the unsatisfied Closing Contingencies shall be deemed Utilities' waiver of such unsatisfied Closing Contingencies. In the event one or more Closing Contingencies is not satisfied or waived (or deemed waived) on or before the Closing Date, this Restated PSA shall terminate and neither Party shall have any further obligations under this Restated PSA.

8.3 Closing Date. The Closing on this Restated PSA shall occur at the office of the Title Company (or other mutually agreeable location) on the Closing Date.

8.4 Seller Closing Deliveries. On or before the Closing Date, Seller shall deliver or cause to be delivered to the Title Company the following items:

8.4.1 Signed special warranty deed for the Corner Shares and any other real property interest represented by the Corner Sharers from Seller free and clear of any

encumbrance, except those permitted by Utilities, to Utilities substantially in the form attached hereto as Exhibit F (the “Special Warranty Deed”).

8.4.2 As required by FLCC bylaws, original certificates for the Corner Shares.

8.4.3 Shares endorsed to Utilities and/or one or more separate share assignments from Seller to Utilities for the Corner Shares substantially in the form attached hereto as Exhibit G, and acceptable to FLCC, which assignment shall, if necessary, include the appointment of an officer of FLCC as attorney-in-fact with authority to change the ownership records of FLCC with respect to the Corner Shares (the “Corner Share Assignments”).

8.4.4 Either (a) valid releases of any encumbrances on the Corner Shares and the Corner Share Water Rights; (b) valid joinders subordinating the encumbrances to Utilities’ interest in such shares and water rights; or (c) newly issued stock certificates without any such encumbrances. The releases or joinders must be in a form reasonably acceptable to Utilities.

8.4.5 Either (a) valid releases of any encumbrances on the Farm, or (b) valid joinders subordinating the encumbrances to the Return Flow Easements and Dry-Up covenants. The releases or joinders must be in a form reasonably acceptable to Utilities.

8.4.6 Signed Operations Agreement.

8.4.7 Signed Dry-Up Covenants.

8.4.8 Signed Return Flow Easements.

8.4.9 Any assignment and assumption agreements necessary to assign existing easements from Seller to Utilities executed by the individuals required and authorized to execute such agreements, including any required consents of property owners.

8.4.10 Such other affidavits, instruments, agreements or other documents as may be reasonably required to complete the transaction contemplated by this Restated PSA.

8.5 Utilities’ Closing Deliveries. On or before the Closing Date, Utilities shall deliver or cause to be delivered to the Title Company the following items:

8.5.1 The Purchase Price in good funds.

8.5.2 The amount of the Administrative Settlement in good funds.

8.5.3 The Special Warranty Deed (as defined above) countersigned by the individuals authorized to accept such deed from Seller.



8.5.4 The Corner Share Assignments and assumption agreements signed by the individuals authorized to accept such assignments from Seller.

8.5.5 The Operations Agreement countersigned by the individuals authorized to execute such document.

8.5.6 The Dry-Up Covenants countersigned by the individuals authorized to accept such covenants from Seller.

8.5.7 The Return Flow Easements countersigned by the individuals authorized to accept such easements from Seller.

8.5.8 Any assignment and assumption agreements necessary to assign existing easements from Seller to Utilities countersigned by the individuals authorized to execute such agreements.

8.5.9 Such affidavits, instruments, agreements or other documents as may reasonably be required to complete the transactions contemplated under this Restated PSA.

8.6 Title Company. Utilities will select the Title Company who shall be a third-party commercially-reputable title company or financial institution. The Closing Deliveries will be made to the Title Company. Seller and Utilities will cooperate with the Title Company to enable the Title Company to prepare and deliver documents required for Closing including, without limitation, delivering to the Title Company any and all affidavits, instruments, and documents as are customarily required in connection with a transfer of water rights and real property in Bent County, Colorado.

9 Assessments. Seller agrees to fully pay and continue to pay any and all assessments imposed by FLCC on the Corner Shares up to and including December 31, 2022, even if such assessments are not due until after Closing. Any unpaid assessments incurred prior to the December 31, 2022 and remaining unpaid at the time of Closing, including any late payment fees and interest, if any, shall be withheld from the Purchase Price and paid to FLCC by the Title Company. Utilities shall assume responsibility for any and all assessments imposed by FLCC on the Corner Shares after December 31, 2022.

10 Change of Water Rights. Utilities intends to seek administrative approval of a temporary change of use or file a water rights change case in water court for the Corner Share HCU or apply to the water court to change the Corner Share Water Rights HCU, which will have the primary purpose of adding as permitted uses of the Corner Share Water Rights all beneficial uses for which Utilities may use the water, and to prosecute an exchange application in water court (in the same or different proceedings) to exchange or otherwise use the applicable HCU in Utilities' municipal system. Utilities shall be solely responsible for all costs associated with the proceedings required to obtain any required approvals, permits, or decrees to permit it to change the type, time, and place of use of the Corner Share Water Rights ("Change Proceedings"). Seller shall have the right to participate, at its own expense, in any Change Proceedings, provided,

however, that Seller will cooperate fully with Utilities in any such proceedings, and will not take any action to impair, impede, or interfere with Utilities' ability to obtain any such required authorization.

11 **Commissions.** Utilities and Seller both represent and warrant to each other that they have not entered into an agreement with a broker or other party requiring the payment of fees or commissions with respect to the transaction contemplated by this Restated PSA. Notwithstanding the foregoing, Seller shall be responsible for any brokers', finders', or similar fees from any third-party claiming under Seller and Utilities shall be responsible for any brokers', finders', or similar fees from any third-party claiming under Utilities.

12 **Transfer Fee and Closing Costs.** Utilities will pay the transfer costs imposed by FLCC with respect to the transfer of the Corner Shares. The Parties shall share equally in the payment of all closing costs, including Title Company costs, and recording fees.

13 **Warranties and Representations of Seller.** In addition to Seller's other representation and warranties contained in this Restated PSA, Seller hereby represents, warrants, and agrees, jointly and severally, that:

13.1 Seller has full power to enter into this Restated PSA and to carry out the transactions contemplated by this Restated PSA.

13.2 This Restated PSA and its execution and delivery to Utilities will not result in a breach of, or constitute a default under, any indenture, loan or credit agreement, mortgage, deed or other agreement of Seller to which it is a party or otherwise bound. Seller affirms its representations and warranties made elsewhere in this Restated PSA, including those contained in the recitals to this Restated PSA.

13.3 As of the Effective Date, Seller is the owner of the Farm in fee simple, and the FLCC Shares.

13.4 There is no litigation pending or threatened that in any manner affects the Corner Shares.

13.5 The execution and delivery of this Restated PSA and the performance of all obligations hereunder by Seller does not and will not require the consent of any third party other than FLCC.

13.6 Seller will not enter into any agreements or contracts concerning the Corner Shares or the ATM Shares between the Effective Date and Closing or termination of this Restated PSA that will impact Seller's ability to consummate the transaction contemplated herein.

13.7 By proceeding with Closing the transaction contemplated herein, Seller will be deemed to have represented, warranted, and agreed, jointly and severally, that the following are true and accurate as of the Closing Date:

13.7.1 Seller owns the Farm in fee simple.

13.7.2 Seller is the sole owner of the Corner Shares free and clear of any encumbrances.

13.7.3 The Corner Shares are not subject to a conservation easement or any other limitations or restrictions not stated in the FLCC articles of incorporation, bylaws, and/or rules and regulations.

13.7.4 No third-party claims any right, title, or interest in or to all or any portion of the Corner Shares or Corner Share Water Rights.

13.7.5 Seller has received no notice of any violations of any law, code, ordinance, rule or regulation or insurance policy affecting the Corner Shares.

- 14 **Seller Covenants.** Between the Effective Date and the Closing Date, Seller shall promptly (but prior to the Closing) notify Utilities in writing of any fact, event, circumstance or action that is or becomes known to Seller that: (a) if known on the Effective Date, would have been required to be disclosed; or (b) the existence or occurrence of any circumstance which would cause Seller's representations or warranties under this Restated PSA to not be correct or complete. Utilities may elect within three (3) business days after receipt of Seller's notice under this Section, but prior to the Closing, to terminate this Restated PSA by giving notice to Seller (and the Title Company as applicable). In the event Utilities elects to terminate the PSA, the Parties shall have no further obligation to each other under this Restated PSA.
- 15 **Appropriations.** In accordance with the Colorado Springs City Charter, performance of Utilities' obligations under this Restated PSA is expressly subject to appropriation of funds by the City Council. In the event funds are not appropriated in whole or in part sufficient for performance of Utilities' obligations under this Restated PSA, or appropriated funds may not be expended due to City Charter spending limitations, then this Restated PSA will thereafter become null and void by operation of law, and Utilities will thereafter have no liability for compensation or damages to Seller in excess of Utilities' authorized appropriation for this Restated PSA or the applicable spending limit, whichever is less and Seller will be released from any obligation to perform the terms of this Restated PSA. Utilities will notify Seller as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable.
- 16 **Notices.** Any and all notices, requests, demands, or other communications (collectively, "Notices") under this Restated PSA shall be in writing and given by (1) an established express delivery service that maintains delivery records requiring a signed receipt; (2) hand delivery; or (3) certified or registered mail, postage prepaid, return receipt requested to the Parties at the following address, or at such other address that the Parties may designate by Notice in the above manner:

To Utilities:

Colorado Springs Utilities  
ATTN: Manager, Water Resources  
P.O. Box 1103, Mail Code 1825  
Colorado Springs, CO 80947-0950

With copies to:

City Attorney's Office – Utilities Division  
P.O. Box 1575, Mail Code 510  
Colorado Springs, CO 80901-1575

To Seller:

Thaddeus Wertz and Sierra Wertz  
15030 US HWY 50  
Las Animas, CO 81054

17 **Publicity.** The Parties (including any representatives, agents or affiliates) shall not issue any press release, statement, or other public communication concerning the transaction contemplated herein without the prior written consent of the other Party.

18 **Amendment.** This Restated PSA may be extended, modified, amended, or changed, in whole or part, only by written amendment duly authorized and executed by both Parties with the same formality as this Restated PSA.

19 **Waiver.** Any waiver of any breach of any provision of this Restated PSA by any Party shall not constitute a continuing waiver of any subsequent breach of either the same or any other provision of this Restated PSA.

20 **Entire Agreement.** This Restated PSA represents the entire agreement of the Parties with respect to the purchase and sale of the Corner Shares and neither Party has relied upon any fact or representation not expressly set forth herein. All prior and contemporaneous conversations, negotiations, possible alleged agreements, representations, covenants, and warranties concerning the subject matter hereof, are merged in this Restated PSA.

21 **Headings for Convenience Only.** Section headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Restated PSA.

22 **Binding Effect and Assignability.** This Restated PSA and the rights and obligations created hereby shall be binding upon and shall inure to the benefit of the Parties hereto and their respective representatives, heirs, and assigns, if any. Seller may not assign their rights or delegate their duties under this Restated PSA without the prior written consent of Utilities, which Utilities may withhold in its sole discretion. Utilities shall be entitled to assign its rights and obligations under this Restated PSA without the consent of Seller.

23 **Governing Law and Venue.** This Restated PSA and its application shall be construed in accordance with the laws of the State of Colorado and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs. Should it be necessary to institute court proceedings concerning this Restated PSA, venue shall be in the District Court for El Paso County, Colorado.

24 **Survival of Representations.** Each and every representation, warranty, covenant, promise, and payment contained in this Restated PSA shall not merge in any deed, assignment, covenant, escrow agreement, easement, lease or any other document, but shall survive at the Closing, and be binding and obligatory upon each of the Parties hereto.

25 **Multiple Originals.** This Restated PSA may be executed in any number of counterparts, each of which shall be deemed an original, but all of which constitute the same agreement.

26 **Interpretation.** Except as otherwise provided herein, nouns, pronouns, and variations thereof shall be deemed to refer to the singular or plural, and masculine or feminine, as the context may require. Any reference to policy, procedure, law, regulation, rule, or document shall mean such policy, procedure, law, regulation, rule, or document as it may be amended from time to time.

27 **Defaults and Remedies.** In the event Seller fails to perform their obligations under this Restated PSA, Utilities may avail itself of any legal and/or equitable remedies available, including without limitation the remedy of specific performance. In the event Utilities fails to perform its obligations under this Restated PSA, Seller may avail themselves of any legal remedies available. Provided, however, that both Parties expressly waive the right to seek consequential or punitive damages.

28 **No Attorney's Fees and Costs.** In the event of any litigation, mediation, or other dispute resolution proceeding arising out of or related to this Restated PSA, each Party agrees to be responsible for its own attorney's fees and other professional fees, costs, and expenses associated with such proceedings.

29 **Non-Severability; Effect of Invalidity.** Each Section of this Restated PSA is intertwined with the others and not severable unless by mutual consent of Utilities and Seller or as provided for below. If any provision or portion of this Restated PSA or the application thereof to any person or circumstance shall, at any time or to any extent, be held invalid or unenforceable for any reason by a court of competent jurisdiction, and the basis of the bargain between the Parties hereto is not destroyed or rendered ineffective thereby, the remainder of this Restated PSA, or the application of such provisions to persons or circumstances other than those which are held invalid or unenforceable, shall not be affected thereby.

30 **Intent of Contract.** This Restated PSA is intended to describe the rights and responsibilities of and between Utilities and Seller and is not intended to, and shall not be deemed to, confer rights upon any person or entities not signatories hereto, or to limit, impair, or enlarge

in any way the powers, regulatory authority and responsibilities of Utilities or any governmental entity not a party hereto.

31 **Non-Business Days.** If any date for any action under this Restated PSA falls on a Saturday, Sunday, or day that is a “holiday” as such term is defined in C.R.C.P. 6, then the relevant date shall be extended to the next business day.

32 **Confidentiality.** Seller acknowledges that Utilities is a public entity subject to the provisions of the Colorado Open (Public) Records Act, C.R.S. § 24-72-201 *et seq.*, Any confidential and/or proprietary information that either Party discloses to the other with respect to this Restated PSA shall be designated as confidential and proprietary by the disclosing Party at the time of disclosure.

33 **Exhibits.** The exhibits attached to this Restated PSA are hereby incorporated into this Restated PSA.

34 **Counterparts and Electronic Signatures.** This Restated PSA and other documents/ agreements required thereby may be executed in multiple counterparts by the parties. All counter parts so executed shall constitute one agreement that is binding on all Parties. Each counterpart shall be deemed an original of this Restated PSA. Documents executed, scanned and signed electronically shall be deemed original signatures for the Purposes of this Restated PSA.

35 **Attorney Representation.** Each Party has been represented by and has had an opportunity to consult legal counsel in connection with the negotiation and execution of this Restated PSA. No provision of this Restated PSA shall be construed against or interpreted to the disadvantage of either Party by reason of such Party having drafted or being deemed to have drafted such provision.

*[the remainder of this page intentionally left blank]*

**IN WITNESS WHEREOF**, the Parties have executed this Restated PSA as of the Effective Date defined above.

**THE CITY OF COLORADO SPRINGS, COLORADO  
ON BEHALF OF ITS ENTERPRISE  
COLORADO SPRINGS UTILITIES**

\_\_\_\_\_  
Travas Deal, Acting Chief Executive Officer

Date:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney's Office - Utilities Division

**SELLER:**

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Thaddeus Wertz

Date:

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Sierra Wertz

Date:



**Exhibit A**  
Legal Description of Farm

In Section 28, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., the land described as follows:

Beginning at a point 675 feet West of the quarter corner of Sections 28 and 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., thence North 202 feet, to the South side of County Road, thence West along South side of said Road to point 1401 feet West of point of beginning, thence East 1401 feet to a point of beginning, containing 5 acres, more or less, in Lot 3 of Section 28, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., EXCEPT:

All that certain tract of land located in the SE1/4SW1/4 and SW1/4SW1/4 of Section 28, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., in Bent County, Colorado and more particularly described as follows:

Beginning at a point whence the South quarter corner of said Section 28, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., bear South 76°48' East 695.5 feet; thence North 0°40' West 40.0 feet to the South right of way line of the present highway, thence along said South right of way line South 87°30' West 1018.9 feet; thence South 67°55' West along said right of way line 366.6 feet; thence easterly with a 4° curve to the right 489.6 feet (the long chord of said curve bearing North 77°42'33" East 487.3 feet) thence North 87°30' East 882.0 feet, more or less to place of beginning, containing 1.066 acres, more or less.

2. See also exception No. 2 under NW1/4 of Section 33-22-51, this instrument.

In Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., the land described as follows:

The NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., Bent County, Colorado, EXCEPT the following described tracts of land, to-wit:

1. All that certain tract of land located in the NW1/4NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., Bent County and more particularly described as follows: Beginning at a point South 22°05' 5 feet East of a point from whence the NW corner of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., bears South 89°07' West 258.9 feet, thence North 90°00' East 159 feet, thence along North right of way line of the present highway South 67°55' 155 feet, thence North 22°05' West 35 feet, more or less, to the place of beginning, containing 0.062 acres, more or less.
2. All that parcel or piece of land located in the NW1/4NW1/4 of Section 33, and SW1/4SW1/4 of Section 28, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., Bent County, Colorado, being bounded and described as follows: Beginning at a point on the North boundary of said Section 33, whence the NW corner of said Section 33, bears South 89°44' West 279.2 feet; thence North 89°44' East along the North boundary a distance of 243.7 feet, thence North

67°55' East along the South right of way line of the present State Highway, a distance of 422.6 feet, thence North 87°30' East along said right of way line of a distance of 89.5 feet, thence South 67°55' West 754.1 feet, more or less, to a point 60 feet distant from and opposite Station 0+00 of the center line survey for F.A.P. 59 R1; thence North 22°05' West 120 feet to the North right of way line, thence North 67°55' East 16.7 feet, more or less to the point of place of beginning, said piece or parcel of land contains 0.735 acres, more or less, less 0.218 acres, more or less, contained in the present road, leaving 0.517 acres, more or less.

3. A tract of land in Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., more particularly described as follows: Beginning 1055 feet North and 30 feet East from the SW corner of the NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., thence East 160 feet, thence North 160 feet, thence West 160 feet, thence South 160 feet, to the place of beginning, containing approximately .588 acres, more or less.
4. Beginning at a point 675 feet West of the NE corner of NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., thence East 675 feet, thence South 664 feet, thence in a straight line in a Northwesterly direction to a point of beginning, containing 5 acres, more or less, the above described land being situated in the NE1/4NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., Bent County, Colorado.
5. A tract or parcel of land containing 1.109 acres, more or less, in the NW1/4NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., in Bent County, said tract or parcel being more particularly described as follows: Beginning at a point on the West line of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., whence the NW corner of Section 33 bears North 0°19' West, a distance of 322.7 feet;
  - (a) Thence North 67°47' East a distance of 32.3 feet to the East right of way line of State Highway No. 183;
  - (b) Thence North 50°01'30" East a distance of 130.5 feet;
  - (c) Thence North 57°44' East a distance of 282.9 feet;
  - (d) Thence North 67°55' East a distance of 209.5 feet to the North line of Section 33;
  - (e) Thence along the North line of Section 33, South 89°41' West a distance of 161.8 feet to the center of the present road;
  - (f) Thence along the center line of the present road, South 67°55' West, a distance of 434.2 feet to the West line of Section 33;
  - (g) Thence along the West line of Section 33, South 0°19' East a distance of 161.7 feet, more or less, to the point of beginning.

The above-described parcel contains 1.109 acres, more or less, of which 0.589 acres are in the right of way of the present road.

6. That part of the NW1/4NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., that lies North and West of present U.S. Highway No. 50, containing 1/2 acres, more or less.

SW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., Bent County, Colorado, EXCEPT the following described tracts of land, to-wit:

1. All that part of the SW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., described as follows, to-wit: Beginning at the SW corner of the SW1/4 of Section 33, for a point of beginning, thence North 130 feet, thence East 205 feet, thence South 130 feet; thence West 205 feet to a point of beginning.
2. Beginning at the SW corner of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup>

P.M., thence North 130 feet for a point of beginning, thence North 190 feet, thence East 385 feet, thence South 320 feet, thence West 180 feet, thence North 130 feet, thence West 205 feet to the point of beginning, containing 2.216 acres, more or less.

3. Starting at a point on the Section line 320 feet North of the SW corner of the SW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., thence North 627 feet, thence East 209 feet, thence South 627 feet, thence to point of beginning, being in all 3 acres, more or less.
4. Commencing at the SW corner of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., thence North a distance of 947 feet to a point, which is the point of beginning, thence North 125 feet, thence East 209 feet, thence South 125 feet, thence West 209 feet to the point of beginning.

All being located in Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., Bent County, Colorado, together with 272.9 shares of the capital stock of the Fort Lyon Canal Company and 272.9 shares of the Rixey Mutual Lateral Company and the right to irrigating water and ditch use such ownership entitles the owner together with all irrigating wells, pumps, motors, and other apparatus and wells with Permit Nos. 86823, 20274-S-R and 20274-R.

## EXHIBIT B

### Form Operations Agreement

### **OPERATIONS AGREEMENT**

This **OPERATIONS AGREEMENT** (the “Agreement”) is made and entered into effective the day of \_\_\_\_\_, 2023 (“Effective Date”), by and between **Thaddeus Wertz and Sierra Wertz**, for themselves and their successors, heirs, and assigns (collectively, “Wertz”) and the **City of Colorado Springs**, Colorado, a home rule City and municipal corporation, acting on behalf of its enterprise, **Colorado Springs Utilities** (“Utilities”). Wertz and Utilities are sometimes referred to herein, individually as a “Party” and collectively, as the “Parties.”

### RECITALS

**WHEREAS**, Wertz owns certain real property in Bent County, Colorado, located on the southeast corner of the intersection of Highway 50 and Bent County Road 15 and legally described on Exhibit A (the “Farm”);

**WHEREAS**, the Farm was historically flood irrigated with, among other things, 272.9 shares of capital stock in the Fort Lyon Canal Company, a Colorado non-profit corporation (the “FLCC Shares”) represented by share certificate number xxxx;

**WHEREAS**, Wertz has installed center pivot sprinklers, including support infrastructure (e.g., ponds, pumps, piping, etc.) on the Farm (the “Center Pivot Sprinklers”);

**WHEREAS**, Wertz will no longer irrigate the corners of the Farm (the “Parcel Corners”) with water attributable to the FLCC Shares;

**WHEREAS**, Wertz conveyed to Utilities, and Utilities is the owner of 80 Shares that were historically used to irrigate the Parcel Corners (“Corner Shares”), which represent a pro-rata interest in the water generated by the FLCC water rights (the “Corner Share Water”);

**WHEREAS**, the Corner Share Water has three components: a portion that has historically been consumed by evapotranspiration (the “HCU”), a portion that has historically returned to the stream as surface return flows (the “Surface Return Flows”), and a portion that has returned to the stream through deep percolation (the “Lagged Return Flows”);

**WHEREAS**, the Parties intend for Utilities to use the HCU by exchange, directly, and after storage for municipal and industrial uses to supply water to the inhabitants of the City of Colorado Springs, Colorado, and Utilities’ other water customers and that the Surface Return Flows and Lagged Return Flows will either be returned to the Arkansas River in time, place, and amount or made available for Utilities’ uses as further set forth below;

**WHEREAS**, Utilities intends to file applications in water court to change the type and place of use of the Corner Share Water HCU, and seek approvals from Bent County and other regulatory and administrative bodies necessary for Utilities’ use thereof;

**WHEREAS**, concurrent with execution of this Agreement, the Parties have entered into that certain Dry-Up and Revegetation Covenants and Easement Agreement that has been recorded at Reception Number \_\_\_\_\_ in the real property records for Bent County, Colorado that, among other things, requires Wertz to dry-up and revegetate the Parcel Corners (the “Dry-Up Covenants”);

**WHEREAS**, the Parties have entered into that certain Non-Exclusive Permanent Return Flow Easement Agreement that has been recorded at Reception Number \_\_\_\_\_ in the real property records for Bent County, that, among other things, permits Utilities to enter the Farm for the purposes of constructing and maintaining any augmentation stations and/or other facilities and related appurtenances that are necessary to ensure that the water attributable to the Corner Shares, and other water, can be delivered to the FLCC Ditch and/or the Arkansas River and its tributaries (“Return Flow Easements”);

**WHEREAS**, in order for Utilities to use the HCU for its intended purposes, Wertz must operate and maintain the Farm in a manner that does not interfere with Utilities’ ability to use the HCU and take certain actions to assist Utilities with complying with all necessary approvals for its use of the Corner Shares; and

**WHEREAS**, the Parties desire to enter into an agreement that sets forth the Parties’ rights and obligations associated with the Farm and facility operations.

**AGREEMENT**

**NOW, THEREFORE**, for good and valuable consideration including the mutual covenants and agreements set forth herein, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. **Term**. This Agreement shall be effective as of the Effective Date and shall have a perpetual term unless terminated pursuant to section 7(D) or by mutual agreement of the Parties, in writing.

2. **Farm and Parcel Corner Obligations**. Wertz agrees to operate the Farm in accordance with the following requirements:

(A) Wertz agrees to operate the Farm solely for agricultural uses and irrigate the Farm, less the Parcel Corners, with the Center Pivot Sprinklers unless another irrigation method is approved by Utilities. To this end, Wertz agrees to keep the Center Pivot Sprinklers in good working order. In the event Wertz intends to irrigate the Farm, less the Parcel Corners, using a method other than the Center Pivot Sprinklers, Wertz must provide Utilities with notice of its intent to do so, along with a detailed description of the proposed irrigation method. Utilities’ approval shall not be unreasonably withheld or denied so long as the proposed irrigation method does not adversely impact Utilities’ ability to use its full entitlement to the HCU or replace the Surface Return Flows and Lagged Return Flows in time, place, and amount. Utilities will notify Wertz whether it approves or denies Wertz’ request within sixty (60) days from Utilities’ receipt of Wertz’ notice. If Utilities approves Wertz’ request to use a new irrigation method, Wertz shall not

subsequently change to another method of irrigating the Farm without providing Utilities with notice and an opportunity to approve or deny the request in accordance with this paragraph.

(B) Wertz agrees that it shall not conduct any activities on the Farm or operate the Farm in a manner that would adversely impact Utilities' ability to use its full entitlement to the HCU or replace the Surface Return Flows and Lagged Return Flows in time, place, and amount.

3. Augmentation Facility Construction, Maintenance and Operation Obligations.

(A) Wertz acknowledges and agrees that Utilities will need to construct augmentation station(s) and other support facilities, including, but not limited to, lateral headgates, measuring flumes, and turnouts on the Farm that Utilities determines, in its sole discretion, are necessary to ensure Utilities can use its full entitlement to the FLCC water associated with the Corner Shares, including ensuring that the Surface Return Flows and Lagged Return Flows can be returned to the FLCC Ditch and/or Arkansas River or its tributaries ("Augmentation Facilities").

(B) Utilities shall be solely responsible for constructing the Augmentation Facilities. Utilities will notify Wertz when the installation of the Augmentation Facilities is complete. Within thirty (30) days following Utilities' notice and no less than annually thereafter, the Parties shall meet to identify all activities required for operation of the Augmentation Facilities and any headgate or other facilities that will be operated by Wertz and develop an operations plan (the "Operations Plan"). The Parties will review the Operations Plan annually and incorporate any changes to the Operations Plan.

(C) Utilities will be responsible, with cooperation from Wertz, for operation, maintenance, and repair of the Augmentation Facilities in accordance with the terms and conditions of this Operations Agreement.

(D) Wertz, with cooperation from Utilities, shall be responsible for taking delivery of the HCU, Surface Return Flows and the Lagged Return Flows at the Farm headgate and delivering them to the Augmentation Facilities as required by any water court decree or administrative approval so that Utilities may use the HCU and so that the Surface Return Flows and Lagged Return Flows are replaced in time, place, and amount or are made available for Utilities' uses as needed.

(E) No less than annually, Utilities will provide Wertz with a list and schedule of the planned maintenance activities Utilities intends to perform on the Augmentation Facilities during the next twelve (12) month period. Prior to the performance of such planned maintenance activities, Utilities will provide Wertz with a list of the employees or contractors who Utilities intends to use to perform the maintenance on behalf of Utilities. Utilities will provide Wertz with updates to the schedule as they are made. For planned activities, Utilities will endeavor to provide Wertz with at least thirty (30) days' prior notice of the date it intends to commence any maintenance and repair activities.

(F) Utilities will inspect the Augmentation Facilities regularly to ensure that they are in good working order and safe to use. If during the course of Wertz' operation of the Farm, Wertz notices any problem or issue with the Augmentation Facilities, Wertz will provide

Utilities with notice of such issue within three (3) days of becoming aware of the problem or issue as soon as practicable. If Wertz notices any problem or issue with the Augmentation Facilities that may result in harm to persons or property, Wertz will notify Utilities within twenty-four (24) hours of becoming aware of such problem or issue.

(G) In the event of an emergency requiring immediate repair of the Augmentation Facilities, Utilities will proceed with the emergency repair as expeditiously as possible under the circumstances and will provide Wertz with notice of the repair as soon as reasonably possible. The Parties may agree that Wertz may perform emergency repairs on behalf of Utilities. In the event Wertz agrees to perform emergency repairs requested by Utilities, Utilities will reimburse Wertz for all reasonable, actual costs incurred by Wertz in conducting emergency repairs.

(H) Utilities agrees to be responsible for all damages Utilities, its employees, contractors, agents, or representatives cause to the Farm as a result of Utilities' operation and maintenance of the Augmentation Facilities. Utilities shall also coordinate with FLCC and Colorado Division of Water Resources staff regarding operation of the Augmentation Facilities. Utilities will further operate the facilities in accordance with the terms and conditions of any water court or administrative/regulatory approvals impacting the Corner Shares.

(I) In the event Utilities and Wertz determine that Wertz should be responsible for operation and maintenance of the Augmentation Facilities, the Parties agree to negotiate in good faith to amend this Agreement to reflect such a change in responsibilities.

#### 4. Water Court/Regulatory Approvals.

(A) Utilities intends to prosecute a water rights change case in water court with the primary purpose of adding as permitted uses of the Corner Share Water Rights all beneficial uses for which Utilities may use the water, to seek administrative approval of a temporary change of use and to prosecute an exchange application in water court (in the same or different proceedings) to exchange or otherwise use the applicable water right in Utilities' municipal system ("Change Proceedings"). Utilities shall be solely responsible for all costs associated with the Change Proceedings. Wertz shall have the right to participate, as a co-applicant (with Utilities' approval) or an opposer, at its own expense, in any Change Proceedings, provided, however, that Wertz will cooperate fully with Utilities in any such proceedings, and will not take any action to impair, impede, or interfere with Utilities' ability to obtain any such required authorization. If Wertz participates in the Change Proceedings as an opposer, its participation shall be limited to ensuring that any decrees entered in the proceedings are consistent with this Agreement, the Dry-Up Covenants, and the Return Flow Easements.

(B) Wertz acknowledges that the installation of the Augmentation Facilities and other actions necessary for Utilities to use the HCU will require approval by FLCC and Bent County as well as other regulatory and administrative approvals. Wertz will cooperate fully with Utilities to obtain any necessary FLCC, Bent County, and other regulatory and administrative approvals and will not take any action to impair, impede, or interfere with Utilities' ability to obtain any required approval.

5. Sale or Lease of Farm; Wertz FLCC Shares. Wertz shall not sell or lease all or any portion of the Farm without providing Utilities with written notice, at least sixty (60) days in advance of such sale or lease. Wertz agrees that it will not separate the Farm and the Wertz FLCC Shares, and that it shall require any purchaser or lessee of the Farm to assume all obligations of this Agreement and that such purchase or lease will be expressly subject to the obligations of this Agreement; any failure to do so shall be deemed a default of this Agreement and will entitle Utilities to the remedies set forth in section 7(B) below.

6. Default and Termination.

(A) Termination. This Agreement is intended to be perpetual, and may be terminated only in accordance with the provisions set forth below, or upon mutual agreement of the Parties.

(B) Default. It is specifically understood that, by executing this Agreement, each Party commits itself to perform pursuant to the terms and conditions contained herein and that the failure of any Party to fulfill any obligation set forth herein shall constitute a breach of this Agreement. The Parties will have all rights and remedies available at law to enforce the terms of this Agreement. The Parties agree that in the event of a breach of this Agreement by Wertz, monetary damages will be wholly insufficient to make Utilities whole and as such, in addition to rights and remedies available at law, Utilities shall have all rights and remedies available in equity to enforce the terms of this Agreement, including, but not limited to, specific performance, injunctive, or other appropriate relief.

(C) Breach. A breach shall be deemed to have occurred if either Party fails to meet its obligations under this Agreement and fails to make a good faith effort to cure such breach within 30 days after receipt of notice by the other Party specifying the breach. In the event that a breach cannot be reasonably cured within 30 days, the breaching Party must commence curing the breach within 30 days of the notice and must continue to diligently prosecute the cure of the breach until it is completed.

(D) Termination by Utilities. It is specifically understood and acknowledged by the Parties that as part of this Agreement, Utilities expects and intends to receive allocations of water that are actually and physically usable for municipal and industrial purposes in Utilities' existing and future service area. If, for whatever reason, including, but not limited to, the inability or failure to obtain decrees in the Change Proceedings, or the inability or failure to obtain any required permit or approval from a governmental or regulatory entity, such as Bent County, Utilities may terminate this Agreement upon provision of thirty (30) days' written notice to Wertz. If Utilities intends to sell or otherwise transfer the Corner Shares to a third party after termination of this Agreement, Utilities shall first provide Wertz with notice of its intent and offer to sell the Corner Shares to Wertz for fair market value as determined by an independent third-party appraiser ("Share Price"). Wertz must provide written notice to Utilities within 30 days from receipt of notice from Utilities of Utilities' intent to transfer the Corner Shares ("Share ROFR Period") to exercise its right to purchase the Corner Shares from Utilities. If Wertz exercises its right of first refusal,



Utilities shall convey the Corner Shares to Wertz within sixty (60) days of the exercise of Wertz' right of first refusal in exchange for the Share Price, which shall be paid to Utilities in cash at closing. If Wertz does not exercise its right to purchase the Corner Shares within the Share ROFR Period, Utilities may transfer the Corner Shares to a third party. If Utilities does not effect such transfer to the third party, however, Utilities' right to sell, transfer, or convey the Corner Shares to another third party shall continue to be subject to Wertz' rights of first refusal, according to the terms and procedures set forth above. If the number of Corner Shares transferred is less than all of the Corner Shares, Wertz rights of first refusal hereunder shall remain applicable to any of the Corner Shares that Utilities does not transfer. The terms of this provision that are intended to survive termination of this Agreement shall survive termination of this Agreement.

7. Dispute Resolution.

(A) In the event of a dispute between the Parties related to this Agreement, the Parties agree that they will use their best efforts to first resolve the dispute informally through consultation and communication between the Parties. If the dispute is not resolved through informal consultation and communication, written notice stating the general nature of each dispute or other matter shall be delivered to the other Party promptly (but in no event later than thirty (30) days) after the start of the event giving rise to the dispute. In such instance, the Parties shall hold a meeting promptly, but in no event later than thirty (30) calendar days from receiving an initial written notice of the dispute or such other date as agreed to by the Parties, attended by persons with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute. If within thirty (30) calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, either Party may request non-binding mediation and in such case the Parties will bear equally the costs of the mediation.

(B) If either Party requests to mediate the dispute, the Parties will jointly select a mediator. If they fail to do so within twenty (20) calendar days from the conclusion of the negotiation period, they shall each select a mediator. The two mediators will then appoint, within ten (10) calendar days of their selection, a third mediator who shall, as the sole mediator, conduct mediation for the Parties. The Parties agree to participate in good faith in the mediation until the dispute is resolved, until the Parties mutually agree that they cannot resolve the dispute through mediation, or the expiration of thirty (30) days after the mediator is selected, whichever comes first. If the Parties are not successful in resolving the dispute through mediation, then the Parties shall be free to litigate the matter.

(C) Each Party agrees to be solely responsible for its costs incurred in litigation arising as a result of this Agreement.

(D) The Parties acknowledge that time is important in resolving any dispute that may arise during the course of pursuing the purposes of this Agreement, and hereby pledge to make their best efforts to resolve any dispute in a timely and efficient manner.

8. Appropriation of Funds. This Agreement is expressly made subject to the limitations of the Charter of the City of Colorado Springs. Nothing herein constitutes or will be deemed to constitute the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs or any other constitutional, statutory, or

charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of Utilities which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide sufficient funds to discharge such obligation, Utilities shall request inclusion of such funds in the subsequent years' annual budget and appropriation. In the event sufficient funds to pay Utilities obligations under this Agreement are not appropriated for two consecutive years, such failure to appropriate: (i) will act to terminate this Agreement at such time as the then-existing and available appropriations are depleted and Wertz will no longer be subject to this Agreement, and (ii) neither such failure nor termination will constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by Utilities.

9. Compliance with Laws. All activities carried out by either Party under this Agreement shall be conducted in accordance with all applicable local, state, or federal requirements, specifications, laws and regulations, including, without limitation, the terms and conditions of any ruling or decree entered by the water court in Utilities' Change Proceedings as well as any approvals granted by Bent County, Colorado, the FLCC Board, or any other regulatory body with jurisdiction over the subject of this Agreement.

10. Assignment. Neither Party may assign its rights and obligations under this Agreement to another Party without the written consent of the other Party, which consent shall not be unreasonably withheld or denied. Notwithstanding the foregoing, Wertz shall not withhold or deny their consent to a partial or complete assignment of Utilities' rights and obligations under this Agreement to a governmental entity, an entity under the control of Utilities, an entity of which Utilities owns significant interest, and/or an entity otherwise related to or affiliated with Utilities, provided that such entity agrees to be bound by the terms of this Agreement. Utilities' consent to an assignment of this Agreement by Wertz shall be conditioned upon the assignee's agreement to be bound by all of the terms and conditions of this Agreement. Any request for consent to an assignment shall be given in writing at least 60 days before said assignment would take effect, and shall include the identity of the assignee and documentation evidencing that the assignee agrees to be bound by the terms and conditions of this Agreement and has the ability to fulfill the assigning Party's obligations under this Agreement. The other Party shall have 30 days to either consent or object to the assignment. If the non-assigning Party does not provide notice of an approval within such time period, its consent to the assignment will be presumed to have been denied. Any dispute related to the non-assigning Party's objection shall be resolved in accordance with the dispute resolution provisions hereof.

11. No Partnership or Agency. Notwithstanding any language in this Agreement or any representation or warranty to the contrary, neither Party shall be deemed or constitute a partner, joint venturer, contractor, or agent of the other Party.

12. No Third-Party Beneficiary. It is expressly understood and agreed that there shall be no third-party beneficiaries under this Agreement and that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the Parties.

13. Insurance. Each Party shall maintain, or cause to be maintained, in force for the duration of this Agreement the insurance required by Exhibit B attached hereto and incorporated herein.

14. Each Party to Bear Own Expenses. To the fullest extent permitted by law, Wertz shall fully protect, defend, indemnify and hold harmless Utilities, their officers, City Council, employees, agents and representatives from and against any and all claims, costs (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs), losses, damages, causes of action, or liability of any nature to the extent caused by the willful misconduct or negligent, reckless or tortious acts or omissions of Wertz or anyone for whose acts Wertz may be liable in the performance of its obligations under this Agreement.

15. Governmental Immunity. Nothing in this Agreement or in any actions taken by the Parties pursuant to this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S, as amended.

16. Notices. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to a Party by the other Party shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the Party to whom it is addressed; or, in lieu of such personal services, five (5) days after being deposited in the United States mail, first-class postage prepaid, return-receipt requested, addressed to the applicable address set forth below. Notice in the case of an emergency shall be considered to have been delivered when an emergency contact listed below has been reached by telephone, or a voicemail message detailing the nature of the emergency and proposed resolution has been left at the designated number or an email detailing the nature of the emergency and proposed resolution has been sent to the designated emergency contact email address.

**If to Wertz :**

Thaddeus Wertz and Sierra Wertz

**Insert Address**

Emergency Contact:

Caleb Wertz

(719) 691-1450

[Wertzcaleb53@gmail.com](mailto:Wertzcaleb53@gmail.com)

**If to Utilities:**

Personal Service Address:

Colorado Springs Utilities

ATTN: Manager, Water Resources

1521 Hancock Expressway

Colorado Springs, CO 80903

Mailing Address:  
Colorado Springs Utilities  
ATTN: Manager, Water Resources  
P.O. Box 1103, Mail Code 1825  
Colorado Springs, CO 80947

With a copy to:  
City Attorney's Office – Utilities Division  
P.O. Box 1575, Mail Code 510  
Colorado Springs, CO 80901-1575

Emergency Contact:  
Kelly Roesch  
(719) 688-0104  
[kroesch@csu.org](mailto:kroesch@csu.org)

Any Party may change its contacts for the purpose of this section by giving written notice of such change to the other Party in the manner provided in this section.

17. Headings. The headings and captions in this Agreement are intended solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

18. Controlling Law and Venue. This Agreement shall be construed in accordance with the laws of the State of Colorado (without reference to conflicts of laws) and the Colorado Springs City Charter, Colorado Springs City Code, City ordinances and resolutions, and City rules and regulations. In the event of litigation, this Agreement shall be enforceable by or against the City of Colorado Springs on behalf of Utilities as provided in Colorado Springs City Code § 12.1.109. In the event of any dispute over the terms and conditions of this Agreement, the exclusive venue and jurisdiction for any litigation arising hereunder shall be in the District Court of El Paso County, Colorado, and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado.

19. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

20. Binding Contract. This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the Parties.

21. Entire Contract. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and sets forth the rights, duties, and obligations

of each to the other with respect to that subject matter as of this date. Any prior agreements, promises, negotiations, or representations with respect to the subject matter hereof, but not expressly set forth in this Agreement, are of no force and effect.

22. No Construction Against the Drafter. This Agreement was drafted with consultation of all Parties. Accordingly, the Parties agree the legal doctrine of construction against the drafter will not be applied should any dispute arise concerning this Agreement.

23. Contract Modification. This Agreement may not be amended, altered, or otherwise changed except by a written agreement between the Parties.

24. Severability. The invalidity or unenforceability of any portion or previous version of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and in such event the Parties shall negotiate in good faith to replace such invalidated provision in order to carry out the intent of the Parties in entering into this Agreement.

25. Counterpart Execution. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

26. Incorporation of Recitals. The above-stated recitals are hereby incorporated by reference to the same extent as if fully restated herein.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the date first above written. By the signature of its representatives below, each Party affirms that it has taken all necessary action to authorize said representatives to execute this Agreement.

GRANTOR: Thaddeus Wertz and Sierra Wertz

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Thaddeus Wertz

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Sierra Wertz

THE CITY OF COLORADO SPRINGS, COLORADO  
A HOME RULE CITY AND COLORADO  
MUNICIPAL CORPORATION, ON BEHALF OF  
ITS ENTERPRISE COLORADO SPRINGS UTILITIES

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Travas Deal, Acting Chief Executive Officer

Date: \_\_\_\_\_

APPROVED AS TO FORM:

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City Attorney's Office – Utilities Division

**[Form Operation Agreement Exhibit A]**

Legal Description of Farm

In Section 28, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., the land described as follows:

Beginning at a point 675 feet West of the quarter corner of Sections 28 and 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., thence North 202 feet, to the South side of County Road, thence West along South side of said Road to point 1401 feet West of point of beginning, thence East 1401 feet to a point of beginning, containing 5 acres, more or less, in Lot 3 of Section 28, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., EXCEPT:

All that certain tract of land located in the SE1/4SW1/4 and SW1/4SW1/4 of Section 28, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., in Bent County, Colorado and more particularly described as follows:

Beginning at a point whence the South quarter corner of said Section 28, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., bear South 76°48' East 695.5 feet; thence North 0°40' West 40.0 feet to the South right of way line of the present highway, thence along said South right of way line South 87°30' West 1018.9 feet; thence South 67°55' West along said right of way line 366.6 feet; thence easterly with a 4° curve to the right 489.6 feet (the long chord of said curve bearing North 77°42'33" East 487.3 feet) thence North 87°30' East 882.0 feet, more or less to place of beginning, containing 1.066 acres, more or less.

2. See also exception No. 2 under NW1/4 of Section 33-22-51, this instrument.

In Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., the land described as follows:

The NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., Bent County, Colorado, EXCEPT the following described tracts of land, to-wit:

1. All that certain tract of land located in the NW1/4NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., Bent County and more particularly described as follows: Beginning at a point South 22°05' 5 feet East of a point from whence the NW corner of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., bears South 89°07' West 258.9 feet, thence North 90°00' East 159 feet, thence along North right of way line of the present highway South 67°55' 155 feet, thence North 22°05' West 35 feet, more or less, to the place of beginning, containing 0.062 acres, more or less.
2. All that parcel or piece of land located in the NW1/4NW1/4 of Section 33, and SW1/4SW1/4 of Section 28, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., Bent County, Colorado, being bounded and described as follows: Beginning at a point on the North boundary of said Section 33, whence the NW corner of said Section 33, bears South 89°44' West 279.2 feet; thence North 89°44' East along the North boundary a distance of 243.7 feet, thence North

67°55' East along the South right of way line of the present State Highway, a distance of 422.6 feet, thence North 87°30' East along said right of way line of a distance of 89.5 feet, thence South 67°55' West 754.1 feet, more or less, to a point 60 feet distant from and opposite Station 0+00 of the center line survey for F.A.P. 59 R1; thence North 22°05' West 120 feet to the North right of way line, thence North 67°55' East 16.7 feet, more or less to the point of place of beginning, said piece or parcel of land contains 0.735 acres, more or less, less 0.218 acres, more or less, contained in the present road, leaving 0.517 acres, more or less.

3. A tract of land in Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., more particularly described as follows: Beginning 1055 feet North and 30 feet East from the SW corner of the NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., thence East 160 feet, thence North 160 feet, thence West 160 feet, thence South 160 feet, to the place of beginning, containing approximately .588 acres, more or less.
4. Beginning at a point 675 feet West of the NE corner of NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., thence East 675 feet, thence South 664 feet, thence in a straight line in a Northwesterly direction to a point of beginning, containing 5 acres, more or less, the above described land being situated in the NE1/4NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., Bent County, Colorado.
5. A tract or parcel of land containing 1.109 acres, more or less, in the NW1/4NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., in Bent County, said tract or parcel being more particularly described as follows: Beginning at a point on the West line of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., whence the NW corner of Section 33 bears North 0°19' West, a distance of 322.7 feet;
  - (a) Thence North 67°47' East a distance of 32.3 feet to the East right of way line of State Highway No. 183;
  - (b) Thence North 50°01'30" East a distance of 130.5 feet;
  - (c) Thence North 57°44' East a distance of 282.9 feet;
  - (d) Thence North 67°55' East a distance of 209.5 feet to the North line of Section 33;
  - (e) Thence along the North line of Section 33, South 89°41' West a distance of 161.8 feet to the center of the present road;
  - (f) Thence along the center line of the present road, South 67°55' West, a distance of 434.2 feet to the West line of Section 33;
  - (g) Thence along the West line of Section 33, South 0°19' East a distance of 161.7 feet, more or less, to the point of beginning.

The above-described parcel contains 1.109 acres, more or less, of which 0.589 acres are in the right of way of the present road.

6. That part of the NW1/4NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., that lies North and West of present U.S. Highway No. 50, containing 1/2 acres, more or less.

SW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., Bent County, Colorado, EXCEPT the following described tracts of land, to-wit:

1. All that part of the SW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., described as follows, to-wit: Beginning at the SW corner of the SW1/4 of Section 33, for a point of beginning, thence North 130 feet, thence East 205 feet, thence South 130 feet; thence West 205 feet to a point of beginning.
2. Beginning at the SW corner of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup>



P.M., thence North 130 feet for a point of beginning, thence North 190 feet, thence East 385 feet, thence South 320 feet, thence West 180 feet, thence North 130 feet, thence West 205 feet to the point of beginning, containing 2.216 acres, more or less.

3. Starting at a point on the Section line 320 feet North of the SW corner of the SW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., thence North 627 feet, thence East 209 feet, thence South 627 feet, thence to point of beginning, being in all 3 acres, more or less.
4. Commencing at the SW corner of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., thence North a distance of 947 feet to a point, which is the point of beginning, thence North 125 feet, thence East 209 feet, thence South 125 feet, thence West 209 feet to the point of beginning.

All being located in Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., Bent County, Colorado, together with 272.9 shares of the capital stock of the Fort Lyon Canal Company and 272.9 shares of the Rixey Mutual Lateral Company and the right to irrigating water and ditch use such ownership entitles the owner together with all irrigating wells, pumps, motors, and other apparatus and wells with Permit Nos. 86823, 20274-S-R and 20274-R.

**[Form Operation Agreement Exhibit B]**

**Minimum Insurance Requirements**

**1. Minimum Insurance Requirements** - Nothing in this Agreement shall limit the Parties access to the minimum required types and limits of Insurance in this Section.

1.1 The Parties shall each maintain insurance coverage for financial protection from and against claims arising out of each Party’s activities and the performance of this Agreement. Such insurance will be through policies placed with commercial insurance companies approved or authorized to conduct insurance business in the state of Colorado and having a minimum A.M. Best rating of “A- / VII” or equivalent from alternate rating agencies which may be acceptable to Utilities’ Risk Management Department.

1.2 Insurance shall be of the required types and minimum limits as follows:

<b>Workers' Compensation<sup>1</sup></b>	Statutory limits for where work is performed and/or where benefits can be claimed.
<b>Employers Liability<sup>1</sup></b> <b>Bodily Injury by Accident – Each Accident</b> <b>Bodily Injury by Disease – Each Employee</b> <b>Bodily Injury by Disease – Policy Limit</b>	\$1,000,000 \$1,000,000 \$1,000,000
<b>Commercial General Liability</b> <b>Each Occurrence</b> Policy Aggregate - Per Project Including but not limited to coverage for: i. Products and Completed Operations ii. Contractual Liability iii. Independent Contractors iv. Riggers Endorsements or CCC exclusion removed v. Separate Aggregate to apply to this Project	\$1,000,000 Per Occurrence \$2,000,000 Aggregate
<b>Automobile Liability</b> <b>All owned, hired and non-owned vehicles</b>	\$1,000,000 Combined Single Limit

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<sup>1</sup> Workers’ Compensation and Employers Liability insurance shall not be required of Wertz as long as Wertz furnishes Utilities with an affidavit affirming that Wertz is not an employer or is otherwise not statutorily required to carry Workers Compensation and Employers Liability insurance. If Wertz becomes an employer or otherwise becomes statutorily required to carry Workers Compensation and Employers Liability insurance after furnishing Utilities with an affidavit affirming Wertz was not an employer, then Wertz must provide Utilities with notice and acquire Workers’ Compensation and Employers Liability insurance as required by this Exhibit B.

<p><b>Umbrella/Excess Liability</b> Excess Liability coverage above the Following Policies:</p> <ul style="list-style-type: none"> <li>i. Commercial General Liability</li> <li>ii. Automobile Liability</li> <li>iii. Employers Liability</li> </ul>	<p>\$1,000,000 Per Occurrence</p>
<p><b>Property Coverage</b></p> <ul style="list-style-type: none"> <li>i. <b>All Risk Property or Inland Marine insurance</b></li> </ul>	<p>Full Replacement Cost</p>

1.3 The types of insurance and limits required above may be satisfied through a combination of self-insured retentions and excess insurance.

1.4 Except for policies of Workers' Compensation, Employers Liability and Professional or Cyber Liability (if required), each Party shall include the other as Additional Insureds on all other policies required herein. Commercial General Liability policies and Umbrella / Excess Liability policies as applicable, shall include the other Party as an Additional Insured for products and completed operations liability coverages, which coverages and Additional Insured status shall be continued for a period not less than two (2) years after final completion.

1.5 Liability insurance policies providing coverage as required in this Section shall be written on an "occurrence form" basis. For policies traditionally written on a "claims-made form" which may be required in this Section, each Party shall provide an extended reporting or "tail" provision for each policy, allowing potential claims to be discovered and reported for a period of not less than two (2) years after final completion of this Agreement.

1.6 **Wertz' All Risk Property or Inland Marine insurance shall cover any existing property and the Equipment against all risks, loss or damage, including coverage during installation, commissioning, and testing of such Equipment, and machinery breakdown, in such form and with such insurers as shall be satisfactory to, or specified by, Utilities, in an amount not less than the full replacement cost of all the equipment and existing property. Utilities shall be named as an additional insured and loss payee as Utilities' interests may appear upon the property insurance and the property insurance shall be primary with respect to any other property insurance maintained by Utilities.**

1.7 Prior to the commencement of operations, and at all times during the course of operations and any activities of Wertz related to inspection and maintenance of Augmentation Facilities, each Party shall provide the other Party with current Certificate(s) of Insurance evidencing continuous compliance with all insurance policy terms and limits as required in Section 1.2 above, and confirming that such coverages will not be cancelled except after 30 days written notice to the other Party, to the extent commercially and reasonably available. To the extent commercially and reasonably available replacement certificates shall be provided to the other Party at least 14 days prior to renewal of any

insurance policies evidenced thereon. If requested by a Party, endorsements confirming compliance with required terms shall be included with the Certificate(s) of Insurance. In the event of any claim or potential claim against a Party whereby that Party may potentially be protected as an Additional Insured under any of the insurance policies required herein, the other Party agrees to provide a full and complete copy of any such policy if so requested by the other Party.

1.8 Each Party shall require each of its subcontractors to furnish evidence that the subcontractor has General Liability Insurance, Workers' Compensation, Employer's Liability, and Automobile Liability Insurance with the limits of liability appropriate to the risk of its scope of work, including appropriate endorsements, and in no event less than \$1,000,000 per occurrence.

1.9 Insurance requirements herein are only the minimum types and amounts required for compliance with this Agreement, and shall not be construed as the full amount and types of insurance which may be necessary to adequately protect each Party for its full and complete obligations to the other Party and third parties as provided for in this Agreement, or otherwise to any other Party. Each Party shall be solely responsible for any deficiencies in the insurance it maintains. Each Party shall have the sole obligation to determine and implement any other types or amounts of insurance necessary and sufficient to protect its obligations and interests. The types and amounts of insurance required herein shall not serve to in any way limit the liability of either Party, including under any warranty or indemnity provision of this Agreement, or any other obligation whatsoever a Party may have to the other Party or third parties.

## EXHIBIT C

### Form Dry-Up Covenants

#### DRY-UP AND REVEGETATION COVENANTS AND EASEMENT AGREEMENT

THIS DRY-UP AND REVEGETATION COVENANTS AND EASEMENT AGREEMENT (“Agreement”) is entered into this \_\_\_\_ day of xxxx, 2023, by and between Thaddeus Wertz and Sierra Wertz (collectively “Wertz”), for themselves and their successors and assigns, as Grantor, and the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation on behalf of its enterprise, Colorado Springs Utilities (“Utilities”), as Grantee (together, the “Parties”).

#### Recitals

**WHEREAS**, Wertz owns certain real property in Bent County, Colorado, located on the northwest corners of the intersection of Highway 50 and Bent County Road 15 and legally described on Exhibit A, attached hereto (the “Farm”);

**WHEREAS**, the Farm was historically flood irrigated with, among other things, 272.9 shares of capital stock in The Fort Lyon Canal Company, a Colorado non-profit corporation (“FLCC”), currently represented by stock certificate number xxxx (the “FLCC Shares”);

**WHEREAS**, Wertz has installed center pivot sprinklers, including support infrastructure (e.g., ponds, pumps, piping, etc.), which will be used to irrigate the Farm (the “Center Pivot Sprinklers”);

**WHEREAS**, Wertz will no longer irrigate the corners of the Farm (the “Parcel Corners”) with water attributable to the FLCC Shares;

**WHEREAS**, Wertz and Utilities entered into that certain purchase and sale agreement signed by the Parties on xxxx, xx, 2022, under which Wertz agreed to sell and Utilities agreed to purchase eighty (80) of the FLCC Shares which were previously utilized to irrigate the Parcel Corners (the “Corner Shares”);

**WHEREAS**, Wertz and Utilities enter into this Agreement as additional consideration for Wertz’ sale of the Corner Shares to Utilities;

**WHEREAS**, concurrent with the execution of this Agreement, Wertz has transferred and conveyed the Corner Shares to Utilities as part of the consummation of the Purchase and Sale Agreement;

**WHEREAS**, FLCC will issue new stock certificate(s) to Utilities to represent the Corner Shares;

**WHEREAS**, once the new stock certificate(s) have been issued, this Agreement will be amended to include the stock certificate number(s) associated with the Corner Shares;

**WHEREAS**, Wertz acknowledges that Utilities intends to change the use of the Corner Shares to include all municipal and industrial uses in a change of water rights proceeding before the Water Court for Division 2 (the “Water Court Change Case”), and temporarily pursuant to a substitute water supply plan (“SWSP”) or interruptible water supply agreement (“IWSA”), Arkansas River Replacement Plan pursuant to Rule 14 of the Amended Rules and Regulations Governing the Diversion and Use of Tributary Groundwater in the Arkansas River Basin (“Rule 14 Plan”), and/or Compact Compliance Plan pursuant to Rule 10 of the Compact Rules Governing Improvements to Surface Water Irrigation Systems in the Arkansas River Basin in Colorado (“Rule 10 Plan”) approved by the Office of the State Engineer (collectively the “Water Court Approvals”);

**WHEREAS**, Wertz further acknowledges that Utilities’ use of the Corner Shares may require approval (the “Regulatory Approvals”) from the FLCC, Bent County, or other federal, state, and/or local government authorities (collectively, the “Regulatory Authorities”);

**WHEREAS**, Wertz further acknowledges that the Water Court Approvals and/or the Regulatory Approvals may require, as terms and conditions of such approvals that the Parcel Corners be dried up and revegetated; and

**WHEREAS**, Wertz desires to grant Utilities the covenants contained herein (the “Covenants”) to affirm Wertz’ agreement to permanently cease all use of the Corner Shares on the Parcel Corners, to confirm Wertz’ obligation to dry-up and revegetate the Parcel Corners, and to provide for a right of entry and easements for the Regulatory Authorities, Utilities and its agents, and for Utilities’ successors and assigns, upon the Farm for the purposes of enforcing this Agreement and any Water Court Approvals or Regulatory Approvals.

**NOW, THEREFORE**, in consideration of Utilities’ purchase of the Corner Shares, Wertz hereby covenants, agrees, and grants as follows:

**Section 1. Real Covenant for Dry-Up.**

(A) Wertz covenants and agrees to cease irrigating the Parcel Corners with any of the remaining FLCC Shares, or otherwise use such water for any other purpose on the Parcel Corners, after installation of the Center Pivot Sprinklers, except to the extent permitted by the terms of this Agreement. Furthermore, Wertz agrees to cease any and all use of the Corner Shares for any purposes whatsoever after installation of the Center Pivot Sprinklers.

(B) Wertz covenants and agrees that the Parcel Corners will not be irrigated, including for purposes of revegetation, with any source of water unless (i) Utilities first gives its express written consent; and (ii) the water used for such irrigation is groundwater that is treated as sole-source pumping and is fully augmented under an augmentation plan approved by the Water Court for Water Division 2, or any SWSP or Arkansas River replacement plan approved by the State Engineer or the water used for such irrigation (a) is water available to Wertz from sources other than the FLCC and (b) is specifically authorized by a decree of the Water Court for Water Division

No. 2 or a SWSP or replacement plan approved by the Colorado State Engineer. Wertz shall provide Utilities with advance notice of its intent to irrigate the Parcel Corners under this subsection 1(B). Utilities shall have 30 days from its receipt of such notice from Wertz to approve or deny Wertz' request. If Wertz continues to irrigate the Parcel Corners in accordance with this subsection, Wertz shall control noxious weeds on the Parcel Corners in accordance with subsection 2(J) and plant a cover crop when the Parcel Corners are fallowed for one year or more.

(C) Wertz shall comply with all terms and conditions included in the *Kansas v. Colorado* Operating Procedures for Administration of Parcels Claimed for Augmentation Credit ("*Kansas v. Colorado* Dry-Up Agreement"), a copy of which is attached as Exhibit B.

(D) Wertz covenants and agrees that in addition to the dry-up requirements set forth above, Wertz also shall meet any dry-up obligations imposed by any Water Court Approvals or Regulatory Approvals.

(E) Successful completion of dry-up of the Parcel Corners will be determined by Utilities in its reasonable discretion, or by the Regulatory Authorities as required by the Regulatory Approvals or other law. In the event the Water Court retains jurisdiction in the Water Court Change Case to certify successful completion of dry-up of the Parcel Corners as a condition of transferring the consumptive use credit available to Utilities for the Corner Shares, then the determination of whether dry-up of the Parcel Corners has been successfully completed will be made by the Water Court.

## **Section 2. Real Covenant for Revegetation.**

(A) As used in this Agreement, the term "revegetation" means ground cover of plant life demonstrated to be, without irrigation, reasonably capable of sustaining itself under the climatic conditions, soils, precipitation and terrain prevailing on the Parcel Corners, with weeds adequately controlled.

(B) In the event Wertz is irrigating the Parcel Corners in accordance with the terms and conditions in subsection 1(B) above, the revegetation obligations described in this Section 2 do not apply.

(C) If at any time Wertz wishes to permanently discontinue irrigation of some portion or all of the Parcel Corners, Wertz shall provide Utilities written notice of Wertz' intent to discontinue irrigation and state whether the permanent cessation of irrigation applies to all or a portion of the Parcel Corners. If the cessation of irrigation applies to only a portion of the Parcel Corners, the notice shall describe the portion of the Parcel Corners to be permanently dried-up. Notice of cessation of irrigation must be given to Utilities at least 120 days before the intended cessation of irrigation. The notice of cessation of irrigation must state the intended future use of the dried-up Parcel Corners or portions thereof, including, whether the dried-up Parcel Corners or portions thereof will be used for development, pasture, or other uses.

(D) Upon receipt of notice of cessation of irrigation, Utilities will confer with Wertz to determine whether the future use of the portion of the Parcel Corners being removed from

irrigation will require the dried-up portion of the Parcel Corners to be revegetated in accordance with the terms of this Agreement. If Utilities determines revegetation is required or if revegetation is required by the Water Court Approvals or Regulatory Approvals, Utilities and Wertz will coordinate in the development of a revegetation and weed control plan setting forth the requirements for revegetation of and noxious weed control on the dried-up portions of the Parcel Corners (the “Revegetation and Weed Control Plan”). The Revegetation and Weed Control Plan will be prepared by a qualified expert(s) chosen by Utilities in its sole discretion and expense and shall be in accordance with the requirements of any Water Court Approval or Regulatory Approval and at a minimum contain the information and requirements set forth in Exhibit C. Once the Revegetation and Weed Control Plan has been agreed to by Utilities and Wertz, Wertz shall revegetate and control noxious weeds on the Parcel Corners in accordance with the Plan.

(E) To the extent that successful establishment and maintenance of revegetation may require water for an interim period, Wertz shall provide such water and Utilities shall reimburse Wertz for the reasonable costs of such water, including the cost power for pumping any wells used by Wertz to provide such water. Potential sources of such water are limited to those sources approved and used pursuant to subsection 1(B) above. Wertz agrees that any irrigation of the Corner Parcels for revegetation shall be accomplished using a metered irrigation system that is not the Center Pivot Sprinklers. Utilities will determine whether water is required for an interim period to establish and maintain revegetation. Until satisfaction of the requirements of the Revegetation and Weed Control Plan, neither Wertz nor Utilities shall remove or alter laterals, headgates, or other structures necessary to accomplish irrigation of all or a portion of a Parcel Corner during the establishment of revegetation.

(F) No later than the end of the tenth growing season after irrigation for agricultural purposes has permanently ceased on the Parcel Corners or portion thereof (the “Revegetation Deadline”), Wertz shall establish and maintain revegetation on the Parcel Corners in accordance with the Revegetation and Weed Control Plan. For revegetation to be “maintained” on the Parcel Corners, such revegetation must have been established for more than one growing season. Wertz shall pay all costs of the revegetation, and weed control of the Parcel Corners, except for the costs of any water required for establishing and maintaining revegetation in accordance with Section 2(E) of this Agreement.

(G) The species of grass or other plants used for revegetation may not include grasses or other plants defined as “noxious” under the provisions of the Colorado Weed Management Act, Article 5.5 of Title 35, C.R.S., and may not include alfalfa or other highly water-consumptive species.

(H) Wertz covenants and agrees that in addition to the revegetation requirements imposed by this Agreement, Wertz shall meet any lawful revegetation obligations imposed by any Water Court Approvals or Regulatory Approvals. If a decree is entered in the Water Court Change Case or a requirement imposed under a Regulatory Approval related to revegetation and weed control on the Parcel Corners that are not included in the Plan, the Parties shall amend the Plan to include those requirements and Wertz shall satisfy any additional applicable terms and conditions in that decree or Regulatory Approval. In the event of any conflict between this Agreement, the



Water Court Change Case decree, and/or the Regulatory Approvals, the strictest standard shall control.

(I) Successful satisfaction of the requirements of the Revegetation and Weed Control Plan will be determined by Utilities in the exercise of reasonable discretion, or the Water Court or other regulatory body, as applicable. At Wertz' request, Utilities may extend the Revegetation Deadline upon a showing by Wertz that Wertz' efforts to establish and maintain revegetation have been materially hindered due to circumstances beyond Wertz' control, including fire, hail storms, wind storms, tornadoes, flooding, extreme drought and freezes after May 15 and before September 15 of any year from the year of execution of this Agreement and including the year of the Revegetation Deadline, so long as such extension is not in conflict with any Water Court Approval or Regulatory Approval.

(J) As an alternative to meeting the obligations imposed by this Section 2 or any Revegetation and Weed Control Plan, Wertz may demonstrate to Utilities' satisfaction that the Parcel Corners have been developed with structures and improvements such that the Parcel Corners are not susceptible to erosion, noxious weeds, or agricultural use.

(K) Once Wertz has completed revegetation of the Parcel Corners, Wertz shall maintain the revegetation and may not engage in any land use practice that will kill all or a substantial or material part of the vegetation planted on the Parcel Corners for the purposes of revegetation. This prohibition includes any tillage, or other mechanical means to break the soil, cultivation, or grazing practices including, but not limited to, dry-land farming, that will kill all or a substantial or material part of the revegetation plantings growing on the land or other native plant cover. Upon completion of the revegetation, Wertz will control noxious weed growth on the Farm, including without limitation the Parcel Corners, and shall do so in a manner that does not materially harm the revegetation plantings and the vegetative ground cover resulting from the revegetation and is in compliance with the Revegetation and Weed Control Plan and all Water Court Approvals and Regulatory Approvals.

(L) Wertz may graze livestock on the revegetated land, but only pursuant to a grazing plan approved in advance by Utilities and the Regulatory Authorities to the extent required by the Regulatory Approvals or other law.

(M) Wertz shall be liable to Utilities for any and all damages or costs incurred by Utilities, as a result of Wertz' negligent destruction or failure to maintain the revegetation plantings.

(N) The limitation on future land use shall not be interpreted to prohibit the subdivision of the Parcel Corners and the construction of buildings or other improvements on the Property, provided that such development does not cause Utilities to be in violation of any Water Court Approvals or Regulatory Approvals.

**Section 3. Continued Operation of the Farm.**

(A) Wertz covenants and agrees that in addition to the other requirements imposed by this Agreement, Wertz shall continue to use the Farm solely for agricultural purposes.

**Section 4. Right of Entry and Easements.**

(A) Wertz hereby grants to Utilities, its successors, assigns, representatives, agents, and its invitees, including but not limited to, the Colorado Division of Water Resources, the Water Court, and any other regulatory or administrative body with jurisdiction over dry-up and revegetation of the Corner Parcels, including the Regulatory Authorities, a perpetual non-exclusive easement to enter, occupy, and use the Farm in accordance with this Agreement to evaluate whether Wertz has and continues to comply with its obligations under this Agreement, the Revegetation and Weed Control Plan, and any Water Court Approvals or Regulatory Approvals. The easement rights granted in this subsection include, without limitation, the right to conduct site inspections; install and maintain observation wells, piezometers, or lysimeters; perform soil evaporation and plant transpiration tests; and perform vegetative studies and surveys. Utilities, its successors, assigns, representatives, agents, and its invitees shall have the perpetual right of reasonable ingress and egress in, to, through, over, under, and across the Farm for access to and from any roads, highways, streets, alleys, or any other point to the Parcel Corners, in order to perform Utilities rights under this Agreement. Utilities will provide Wertz with reasonable notice prior to accessing or allowing its employees, contractors, representatives, or agents to access the Farm pursuant to this Section 3(A).

(B) In the event that Wertz fails to perform its obligations for dry-up and revegetation hereunder, as determined by Utilities in its reasonable discretion, the easements granted in this Section also will entitle Utilities, its successors, assigns, representatives, agents, and its invitees to take all actions Utilities deems necessary to accomplish the dry-up and revegetation of the Parcel Corners including, without limitation, constructing drainage and conveyance ditches, monumenting dried-up acreage, revegetating with drought-resistant plants, removing alfalfa and other deep-rooted plants, trees, phreatophytes, and tamarisk, and removing and filling in all or portions of irrigation ditches and/or farm laterals. Wertz will reimburse Utilities for all expenses Utilities incurs, up to a maximum of \$200 per acre, to dry-up and revegetate the Parcel Corners, provided further, that this expense limitation does not include or apply to any costs Utilities may incur in relation to Wertz' provision of water for revegetation purposes pursuant to subsection 2(E) above. Upon completion of all actions necessary for Utilities to accomplish the dry-up and revegetation of the Corner Parcels, Utilities shall provide Wertz with an invoice for the expenses. Wertz shall make payment on such invoice within 30 days of receipt.

(C) Utilities shall replace, repair, or reimburse Wertz for the reasonable cost of replacement or repair of physical damage to Grantor's improvements on the Parcel Corners, to the extent such damage is caused by Utilities' use of the Parcel Corners pursuant to this Agreement.

**Section 5. General Provisions.**

(A) This Agreement, with the burdens it imposes, is binding upon, touches and concerns, and will run with the Farm in perpetuity, and is forever enforceable against Wertz and their successors, heirs, and assigns in the Farm for the benefit of the Corner Shares, Utilities, and Utilities' successors and assigns.

(B) Wertz warrants that it has good and marketable title to the Farm and has full right and lawful authority to make the covenants and grant the easements contained in this Agreement. Further, Wertz warrants, promises, and agrees to defend Utilities in the exercise of Utilities' rights hereunder against any defect in Wertz' title to the Farm or Wertz' right to make the covenants and/or grant the easements in this Agreement. This Agreement may be enforced by Utilities or by any party having any right, title or interest in the water rights represented by the Corner Shares or by the State Engineer of the State of Colorado, at any time in any action at law or in equity, including, without limitation specific performance and injunctive relief.

(C) Wertz is and will be entitled to use the Parcel Corners for any purpose not inconsistent with this Agreement including, but not limited to, the mining and removal of sand, gravel, and other materials; approved dry-land grazing; and recreational, residential, commercial, and industrial purposes.

(D) Notwithstanding anything else in this Agreement, Wertz is prohibited from irrigating, using, developing, or conducting any activities on the Parcel Corners in any manner that reduces the consumptive use credit available to Utilities from the Corner Shares in the Water Court Change Case or any Water Court Approval.

(E) Wertz shall reasonably cooperate with Utilities to demonstrate the dry-up and revegetation of the Parcel Corners, including but not limited to, providing affidavits or testimony at no cost to Utilities.

(F) Upon Utilities' transfer of the Corner Shares to any party, that party will succeed to Utilities' interest in this Agreement and will have the right to enforce the terms of the Agreement against Wertz or the then-current owner of the fee title to the Farm.

(G) All recitals and attached exhibits to this Agreement are incorporated herein by this reference.

(H) Utilities will record this Agreement in the real property records of the Clerk and Recorder of Bent County, Colorado.

(I) All notices and other communications that are required or permitted to be given to the Parties under this Agreement shall be sufficient in all respects if given in writing and delivered in person, by express courier, or by first class U.S. mail, postage prepaid. Notice delivered in person or by courier shall be effective upon such delivery; notice provided through U.S. mail shall be effective three days after deposit in the U.S. mail. Notice shall be given to the receiving party

at the following addresses or to such other address as such party may have given to the other by notice pursuant to this subsection:

FOR WERTZ

Thaddeus Wertz and Sierra Wertz  
**Insert Address**

FOR UTILITIES

Manager, Water Resources  
Colorado Springs Utilities  
P.O. Box 1103 Mail Code 1825  
Colorado Springs, CO 80947

With a Copy to:

City Attorney's Office  
Colorado Springs Utilities  
ATTN: Utilities Division  
P.O. Box 1575  
Colorado Springs, CO 80901-1575

(J) The failure of Utilities to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants, or agreements herein contained, or the failure of Utilities in any one or more instances to exercise any option, privilege, or right herein contained, shall in no way be construed to constitute a waiver, relinquishment or release of such obligations, covenants, or agreements, and no forbearance by Utilities of any default hereunder shall in any manner be construed as constituting a waiver of such default.

(K) This Agreement shall be construed in accordance with the laws of the State of Colorado. In the event of any dispute over this Agreement or its subject matter, the exclusive venue and jurisdiction for any litigation arising hereunder shall be in the District Court of El Paso County, Colorado, and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado.

(L) Except as expressly provided otherwise, this Agreement is intended to be solely for the benefit of the parties hereto and shall not otherwise be deemed to confer upon or give to any other person or third party any remedy, claim, cause of action or other right.

(M) The provisions of this Agreement are severable. Illegality or unenforceability of any provision herein shall not affect the validity or enforceability of the remaining provisions in this Agreement.

(N) This Agreement represents the entire agreement between the parties hereto regarding the matters contained herein and no additional or different oral representation, promise

or agreement, oral or otherwise, shall be binding on any of the parties hereto with respect to the subject matter of this instrument, unless stated in writing explicitly referring to this Agreement and signed by the parties.

(O) In the event Wertz fails to perform any of Wertz’ obligations under this Agreement, Utilities may avail itself of any legal and/or equitable remedies available, including without limitation, the remedy of specific performance.

(P) This Agreement may be modified, amended, or changed, in whole or part, only by written amendment duly authorized and executed by both Parties. As set forth in the recitals, the Parties intend, and will cooperate, to amend this Agreement upon issuance of new stock certificates to Utilities representing the Corner Shares, and upon the installation of the Center Pivot Sprinklers and survey of the Parcel Corners.

**IN WITNESS WHEREOF, THE WERTZ HAVE EXECUTED THIS DRY-UP AND REVEGETATION COVENANTS AND EASEMENT AGREEMENT** on the date set forth above.

**THADDEUS WERTZ**

**SIERRA WERTZ**

\_\_\_\_\_  
Thaddeus Wertz

\_\_\_\_\_  
Sierra Wertz

STATE OF COLORADO    )  
  )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing **DRY-UP AND REVEGETATION COVENANTS AND EASEMENT AGREEMENT** was acknowledged before me this \_\_\_\_<sup>th</sup> day of xxxx, 2023 by Thaddeus Wertz.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_

[SEAL]

\_\_\_\_\_  
Notary Public



**THE CITY OF COLORADO SPRINGS, COLORADO  
A HOME RULE CITY AND COLORADO  
MUNICIPAL CORPORATION, ON BEHALF OF  
ITS ENTERPRISE COLORADO SPRINGS UTILITIES**

---

Jessica Davis  
Land Resource Manager  
Colorado Springs Utilities

Date: \_\_\_\_\_

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF EL PASO    )

The foregoing **DRY-UP AND REVEGETATION COVENANTS AND EASEMENT AGREEMENT** Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by Jessica Davis, as Land Resource Manager of Colorado Springs Utilities, an enterprise of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation.

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Notary Public

My commission expires \_\_\_\_\_

**THE CITY OF COLORADO SPRINGS, COLORADO  
A HOME RULE CITY AND COLORADO  
MUNICIPAL CORPORATION, ON BEHALF OF  
ITS ENTERPRISE COLORADO SPRINGS UTILITIES**

---

Darlene Kennedy  
Real Estate Services Manager  
City of Colorado Springs

Date: \_\_\_\_\_

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF EL PASO    )

The foregoing **DRY-UP AND REVEGETATION COVENANTS AND EASEMENT AGREEMENT** Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by Darlene Kennedy, as Real Estate Services Manager of the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation.

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Notary Public

My commission expires \_\_\_\_\_

APPROVED AS TO FORM:

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City Attorney's Office – Utilities Division



**[Form Dry Up Covenants Exhibit A]**

Legal Description of Farm

In Section 28, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., the land described as follows:

Beginning at a point 675 feet West of the quarter corner of Sections 28 and 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., thence North 202 feet, to the South side of County Road, thence West along South side of said Road to point 1401 feet West of point of beginning, thence East 1401 feet to a point of beginning, containing 5 acres, more or less, in Lot 3 of Section 28, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., EXCEPT:

All that certain tract of land located in the SE1/4SW1/4 and SW1/4SW1/4 of Section 28, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., in Bent County, Colorado and more particularly described as follows:

Beginning at a point whence the South quarter corner of said Section 28, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., bear South 76°48' East 695.5 feet; thence North 0°40' West 40.0 feet to the South right of way line of the present highway, thence along said South right of way line South 87°30' West 1018.9 feet; thence South 67°55' West along said right of way line 366.6 feet; thence easterly with a 4° curve to the right 489.6 feet (the long chord of said curve bearing North 77°42'33" East 487.3 feet) thence North 87°30' East 882.0 feet, more or less to place of beginning, containing 1.066 acres, more or less.

2. See also exception No. 2 under NW1/4 of Section 33-22-51, this instrument.

In Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., the land described as follows:

The NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., Bent County, Colorado, EXCEPT the following described tracts of land, to-wit:

1. All that certain tract of land located in the NW1/4NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., Bent County and more particularly described as follows: Beginning at a point South 22°05' 5 feet East of a point from whence the NW corner of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., bears South 89°07' West 258.9 feet, thence North 90°00' East 159 feet, thence along North right of way line of the present highway South 67°55' 155 feet, thence North 22°05' West 35 feet, more or less, to the place of beginning, containing 0.062 acres, more or less.
2. All that parcel or piece of land located in the NW1/4NW1/4 of Section 33, and SW1/4SW1/4 of Section 28, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., Bent County, Colorado, being bounded and described as follows: Beginning at a point on the North boundary of said Section 33, whence the NW corner of said Section 33, bears South 89°44' West 279.2 feet; thence North 89°44' East along the North boundary a distance of 243.7 feet, thence North

67°55' East along the South right of way line of the present State Highway, a distance of 422.6 feet, thence North 87°30' East along said right of way line of a distance of 89.5 feet, thence South 67°55' West 754.1 feet, more or less, to a point 60 feet distant from and opposite Station 0+00 of the center line survey for F.A.P. 59 R1; thence North 22°05' West 120 feet to the North right of way line, thence North 67°55' East 16.7 feet, more or less to the point of place of beginning, said piece or parcel of land contains 0.735 acres, more or less, less 0.218 acres, more or less, contained in the present road, leaving 0.517 acres, more or less.

3. A tract of land in Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., more particularly described as follows: Beginning 1055 feet North and 30 feet East from the SW corner of the NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., thence East 160 feet, thence North 160 feet, thence West 160 feet, thence South 160 feet, to the place of beginning, containing approximately .588 acres, more or less.
4. Beginning at a point 675 feet West of the NE corner of NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., thence East 675 feet, thence South 664 feet, thence in a straight line in a Northwesterly direction to a point of beginning, containing 5 acres, more or less, the above described land being situated in the NE1/4NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., Bent County, Colorado.
5. A tract or parcel of land containing 1.109 acres, more or less, in the NW1/4NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., in Bent County, said tract or parcel being more particularly described as follows: Beginning at a point on the West line of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., whence the NW corner of Section 33 bears North 0°19' West, a distance of 322.7 feet;
  - (a) Thence North 67°47' East a distance of 32.3 feet to the East right of way line of State Highway No. 183;
  - (b) Thence North 50°01'30" East a distance of 130.5 feet;
  - (c) Thence North 57°44' East a distance of 282.9 feet;
  - (d) Thence North 67°55' East a distance of 209.5 feet to the North line of Section 33;
  - (e) Thence along the North line of Section 33, South 89°41' West a distance of 161.8 feet to the center of the present road;
  - (f) Thence along the center line of the present road, South 67°55' West, a distance of 434.2 feet to the West line of Section 33;
  - (g) Thence along the West line of Section 33, South 0°19' East a distance of 161.7 feet, more or less, to the point of beginning.

The above-described parcel contains 1.109 acres, more or less, of which 0.589 acres are in the right of way of the present road.

6. That part of the NW1/4NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., that lies North and West of present U.S. Highway No. 50, containing 1/2 acres, more or less.

SW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., Bent County, Colorado, EXCEPT the following described tracts of land, to-wit:

1. All that part of the SW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., described as follows, to-wit: Beginning at the SW corner of the SW1/4 of Section 33, for a point of beginning, thence North 130 feet, thence East 205 feet, thence South 130 feet; thence West 205 feet to a point of beginning.
2. Beginning at the SW corner of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup>

P.M., thence North 130 feet for a point of beginning, thence North 190 feet, thence East 385 feet, thence South 320 feet, thence West 180 feet, thence North 130 feet, thence West 205 feet to the point of beginning, containing 2.216 acres, more or less.

3. Starting at a point on the Section line 320 feet North of the SW corner of the SW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., thence North 627 feet, thence East 209 feet, thence South 627 feet, thence to point of beginning, being in all 3 acres, more or less.
4. Commencing at the SW corner of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., thence North a distance of 947 feet to a point, which is the point of beginning, thence North 125 feet, thence East 209 feet, thence South 125 feet, thence West 209 feet to the point of beginning.

All being located in Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., Bent County, Colorado, together with 272.9 shares of the capital stock of the Fort Lyon Canal Company and 272.9 shares of the Rixey Mutual Lateral Company and the right to irrigating water and ditch use such ownership entitles the owner together with all irrigating wells, pumps, motors, and other apparatus and wells with Permit Nos. 86823, 20274-S-R and 20274-R.

**[Form Dry Up Covenants Exhibit B]  
*Kansas v. Colorado Dry-Up Agreement***

**Operating Procedures For  
Administration Of Parcels Claimed For  
Augmentation Credit**

Plans Approved by the Colorado State  
Engineer Pursuant to the Amended Rules  
and Regulations Governing the Diversion  
and  
Use of Tributary Ground Water  
in the Arkansas River Basin,  
Colorado

September 2005



## **I. Selection and Approval of Parcels for Augmentation Credit**

### ***A. Colorado's Evaluation of Acreage***

The Colorado Division of Water Resources (CDWR) has conducted several studies of irrigated lands in the Lower Arkansas Basin over a period of several decades. During the Kansas v. Colorado court case George Moravec developed mapping of irrigated acreage and assignments to ditch service areas using 1985 aerial photos for the area between Pueblo and the Kansas-Colorado stateline. Similarly, Spronk Water Engineers evaluated 1980 aerial photos for the State of Kansas and developed mapping of irrigated lands in the same area. Experts also reviewed historic aerial photos and data to assess changes in acreage during the period just prior to the Arkansas River Compact through 1980.

In 1998 and again in 2002 and 2003, the CDWR conducted studies of irrigated lands in the same areas using satellite imagery to classify irrigated and non-irrigated lands. Additionally, the CDWR has developed an ongoing data collection system to determine the lands irrigated by wells as a sole source of supply or as a supplemental source to surface water by conducting farm verification interviews each winter with farm operators in the lower basin. The work done by Colorado to identify and map irrigated lands has been critiqued by Kansas and by Colorado water right owners and ditch companies and corrected as applicable.

The Colorado State Engineer believes that the result of these studies is a comprehensive set of mapping that should be relied upon for evaluating claims for augmentation credit derived from the removal of pre-compact water rights for replacement of stream depletions caused by post-compact well pumping.

***B. Nomination of Parcels for Dry-up Credits in Replacement Plans***

Beginning with the 2006-07 Replacement Plan year, plan proponents will need to select parcels for dry-up credit utilizing the mapping developed by the CDWR for any dry-up credit to be claimed under the provisions of Rule 6 of the Amended Rules and Regulations Governing the Diversion and Use of Tributary Ground Water in the Arkansas River Basin, Colorado (Amended Use Rules). The CDWR mapping will include areas shown as irrigated in either the 1985 aerial photos evaluated by Colorado or the 1980 aerial photos evaluated by Kansas. Parcels identified within this mapped area that have not had shares moved to different locations will be eligible for dry-up crediting under Rule 6 provisions.

Mapped parcels shall be provided in GIS format compatible with the ArcView software used by the CDWR unless provisions are made to coordinate mapping with the Division 2 Office in Pueblo. Mapping for nominated parcels must be provided with the March 1, 2006 Replacement Plan submittals in order to ensure timely approval of replacement sources for the 2006-07 Plan Year and by March 1st of each succeeding plan year.

### *Example of CDWR Mapping*



Plan proponents seeking to nominate any lands they believe were historically irrigated that do not lie within the mapped irrigated lands developed by the CDWR must seek a change of water right for the associated shares in Division 2 Water Court prior to approval in any plan approved pursuant to the Amended Use Rules.

#### *C. Minimum Standards for Parcel Selection*

Dry-up parcels must be at least five acres unless they comprise all of an existing DWR parcel that is already less than five acres. Parcels that represent a portion of an existing field can only be split with the

direction of historic irrigation unless a means of physical separation is approved by the Division Engineer. A physical separation must exist between any irrigated portion of a parcel and the dry-up portion unless prior approval by the Division Engineer's Office is received. Waiver of the physical separation criteria will only occur for areas adjacent to sprinkler or drip systems and not for flood and furrow irrigation. For dry-up fields left fallow or with a dryland cover crop without permanent root system (that is, not alfalfa or pasture grass for example), the separation can be a ditch or tilled strip at least ten feet in width that prevents irrigation application from reaching the dry-up parcel. For partial fields containing deep-rooted crops such as alfalfa or pasture grass a deep tilled separation of at least 25 feet must be maintained along with any ditches necessary to ensure no irrigation application to the dry-up portion. For any dry-up parcel that is planted with a dryland crop (haygrazer, milo, millet, etc.), the crop should either be drilled at an angle to normal irrigation direction or a tilled strip maintained at the top of the field that clearly separates the crop from any possible irrigation source (preferably both).



*Example of Physical Separation Between  
Irrigated Parcel and Dry-up Parcel*



*Example of Tilled Strip at Dry-up  
Parcel Header for Dryland Crop*



***D. Dry-up Parcels Irrigated by Sole Source Wells***

For any parcel from which surface water has been removed and claimed for augmentation credit, but which will be irrigated by a sole source well (e.g. drip systems or sprinkler systems or sole source flood), the following information must be provided with each March 1st Plan submittal:

1. Well ID Number(s) serving the parcel
2. Method of irrigation (Drip, Sprinkler, Flood, Etc.)
3. Description of how parcel will be separated from surface water irrigation and storm runoff from areas adjacent to the parcel
  - a) Removal of header ditch
  - b) Plug in header ditch or in feeder from surface water lateral
  - c) Other method (describe)

***E. Parcels Formerly Containing Alfalfa or Alfalfa-Grass Stands***

Beginning with the 2006-07 Replacement Plan Year parcels containing alfalfa or mixed alfalfa stands must be deep tilled or chemically killed by no later than April 1st of each Plan Year unless the CDWR field staff have inspected the parcel and the Division Engineer has agreed that the alfalfa stand will not produce any significant growth due to either precipitation or

sub-irrigation. Notwithstanding these provisions, for any parcel that exhibits sustained growth (i.e. plant growth to a height of more than 6 inches) during the dry-up year, the CDWR field staff shall require either immediate chemical kill or deep tillage or shall deem the parcel to be disqualified for augmentation credit.

***F. Parcels with Areas of High Ground Water or Seepage***

Fields containing areas of high ground water or areas effected by seepage from ditches or natural water courses, ponds or reservoirs may be disqualified or required to be chemically killed or deep tilled if significant crop growth continues to occur during the irrigation season absent irrigation supply.

***G. Plan Year and H-I Model Year Dry-up Claims***

Due to the conflict between Replacement Plan years (April 1st through March 31st) and H-I Modeling periods (January 1st through December 31st), replacement plan proponents shall indicate whether a dry-up claim is for the Plan Year of calendar year. For any dry-up parcel irrigated during the period January through March of any year, but nominated for dry-up credit after April 1st (e.g. winter wheat), the plan proponent must provide a consumptive use analysis consistent with the methodology used for H-I Model crediting prepared by a registered professional engineer to determine how to pro-rate the dry-up acreage

for the partial H-I Model year. This analysis must be submitted by no later than May 1st of the year in which the partial credit is being claimed. An estimate of the reduction in consumptive credit to be used in the Replacement Plan shall be provided with the March 1st plan submittal for purposes of plan evaluation and approval.

#### ***H. Mapping by Division of Water Resources for Approved Parcels***

Using GIS data provided by the plan proponents, Division 2 staff will prepare dry-up shapefiles and mapping of the parcels approved in the replacement plan. This data and mapping will be used by CDWR field staff and Kansas to monitor dry-up fields. Division 2 staff will attempt to make this mapping available by April 15th of each year. Final mapping for dry-up affidavits will be produced at the conclusion of the credit period (January 15th for calendar year dry-up and April 15th for replacement year dry-up).

## **II. Parcel Identification**

### ***A. Parcel Identification***

Parcels shall normally be identified using the Parcel ID established by CDWR unless another parcel identification system is approved by the Division Engineer. Mapping of approved parcels and data collection by CDWR field staff while monitoring parcels will rely on the Parcel ID to relate parcel information. The typical Parcel ID is in the format

Township Number, Range Number, Section Number and a two-digit field number (e.g. 21573607).

## ***B. Physical Identification of Dry-up Parcels***

### **1. Permanent Dry-up Parcels**

For parcels that have been approved for dry-up for at least three consecutive years, or that are intended for permanent removal of all types of irrigation, a sign shall be placed in a prominent location near the most logical point of observation near a public road way or the commonly used access point to the parcel. The sign shall be securely mounted on a 4" x 4" or 6" by 6" timber post and shall be at least 9" wide by 12" high, made of durable material, and with minimum 1" lettering. Signs shall state "Dry-Up Parcel ID XXXXXXXX."

### **2. Temporary Dry-up Parcels**

For parcels that are nominated for only temporary dry-up (less than three consecutive years), a sign shall be placed in a prominent location near the most logical point of observation near a public road way or the commonly used access point to the parcel. The sign shall be securely mounted on a steel tee-post or 4" x 4" or 6" by 6" timber post and shall be at least 12" wide by 6" high, made of durable material, and with minimum 1" lettering.

Signs shall state:

**“Dry-Up Parcel ID XXXXXXXX”  
“No Irrigation”**

or

**“Dry-Up Parcel ID XXXXXXXX”  
“Irrigated by Well ID XXXXXXXX”**

### **3. Installation of Signs**

Signs shall be installed by no later than April 1st of each year and signs on permanent dry-up fields shall be inspected for damage and possible replacement by April 1st of each year. Mapping showing sign locations or GPS locations of signs shall be provided by no later than April 15th of each year.

## **III. Field Monitoring of Dry-up Parcels**

### ***A. Colorado Division of Water Resources’ Role***

Division of Water Resources field staff shall visit dry-up parcels on a periodic basis during each irrigation season to determine adequacy of dry-up provisions and sources of irrigation supply for parcels that have ongoing irrigation by sole source wells. Data will be collected for each parcel as shown on the attached field inspection form. Data collected will be maintained in the Division 2 Office and periodically provided to Kansas and interested parties upon request. Problems discovered during the periodic inspections

Dryup Field Verification Form

Date: \_\_\_\_\_

Verified By: \_\_\_\_\_

<b>Arrival Time</b>	<b>DWR Parcel ID</b>	<b>Plan Parcel ID</b>	<b>Cover Vegetation Type</b>	<b>General Observations</b>
<b>GPS Point</b>		<b>View Type</b>	<b>Photo Comment</b>	
<b>Arrival Time</b>	<b>DWR Parcel ID</b>	<b>Plan Parcel ID</b>	<b>Cover Vegetation Type</b>	<b>General Observations</b>
<b>GPS Point</b>		<b>View Type</b>	<b>Photo Comment</b>	
<b>Arrival Time</b>	<b>DWR Parcel ID</b>	<b>Plan Parcel ID</b>	<b>Cover Vegetation Type</b>	<b>General Observations</b>
<b>GPS Point</b>		<b>View Type</b>	<b>Photo Comment</b>	

will be communicated to the designated person for each plan so that the problem can be resolved or credits forfeited for the specific parcel.

Shares attributable to any parcel deemed by the Division Engineer as not actually being in a dried up condition shall be immediately removed from computations of augmentation credits.

The CDWR personnel will also conduct joint field inspections as requested with personnel from Kansas and will coordinate on communication about problems with any dry-up parcels that will affect the H-I Model input data.

### ***B. Role of Plan Proponent and Well Owners***

Each replacement plan shall designate with the March 1st Plan Application a contact person or person(s) for communications related to dry-up parcels. The contact person shall be responsible for ensuring that all mapping, signage and owner information is provided as described above. The contact person will also be responsible for contacting any owners for parcels with restricted access to arrange periodic field inspections and will be available to participate on field inspections by CDWR field staff upon request. The contact person will be responsible for communicating with owners of tracts where problems with dry-up conditions have been encountered to correct dry-up deficiencies. The plan proponent contact will also be responsible for ensuring that all dry-up affidavits are submitted in a timely manner and with



complete documentation as may be required by plan approval conditions.

Owners of dry-up parcels will be responsible for notifying CDWR when any spill or irrigation occurs on a parcel that may disqualify the parcel or portions thereof from dry-up crediting. Timely notification will facilitate remediation activities that may preserve most dry-up credit for a parcel. When required by CDWR staff to take corrective actions on a parcel the owner or contact person will prepare a report to document actions taken and submit the report to the Division 2 Office within ten days of remediation activities.

### ***C. Resolution of Problems with Tracts***

When a problem is discovered on a tract the Division Engineer or designated representative will determine whether an acreage reduction or consumptive use reduction is necessary. For parcels where dry-up has been unobtainable for the majority of a season on a discreet portion of a parcel an acreage deduction will be made for the dry-up crediting to eliminate that portion.

For parcels that experience continued growth of permanent vegetation, such as alfalfa, despite efforts to chemically kill or deep till the parcel, partial dry-up credit will only be considered if a consumptive use analysis prepared as described in Paragraph I-G above is submitted with the dry-up affidavit.

#### ***D. Dry-up Affidavits***

At the conclusion of each dry-up period (either April through December or April through the following March), an affidavit shall be submitted signed by a person having knowledge of the dry-up activities and historic irrigation of the parcel. An example of the dry-up affidavit is attached. Affidavits will normally be due by January 15th for April through December dry-up or by April 15th for April through March dry-up.

Affidavits for each plan shall be submitted with a summary tabulation indicating for each parcel whether the claim is made for full credit, partial credit or whether the tract was irrigated by a sole source well. Summary tabulations shall total the claimed acreage by category under each ditch.



**Form Dry Up Covenants Exhibit C**  
**Minimum Revegetation and Weed Control Plan Requirements**

- (1) A report by a qualified independent expert evaluating the species, character and density of existing vegetation on the site and summary of potential impacts to vegetation as a result of the Project, and
- (2) A revegetation plan, prepared by a qualified independent expert, that includes/provides for:
  - (a) A procedure for Utilities to extend the Revegetation Deadline at Utilities' sole discretion;
  - (b) A procedure for Utilities to make the determination that Wertz have successfully completed revegetation of the Corner Parcels in accordance with the Agreement and the Water Court or Regulatory Approvals;
  - (c) Removal of existing vegetation no more than thirty (30) days prior to commencement of initial site grading;
  - (d) Revegetation of areas that have been filled, covered or graded as soon as practicable;
  - (e) Use of site-specific native seed mix, with the exception of any landscaped areas and use of mulching to support vegetation growth;
  - (f) Topsoil from disturbed areas stripped and stockpiled on-site for redistribution over the completed final grade; stockpiling that conforms to best management practices and ensures that soil organisms in stockpiled soil remain viable until completion of the redistribution process.
- (3) A weed control plan, prepared by a qualified independent expert, that addresses all State and County-listed noxious weeds found on site and includes:
  - (a) Inventory and map showing the locations of State and County-listed noxious weeds; and
  - (b) Ongoing weed control at all locations disturbed by the Project and along access roads during construction and operational phases.
  - (c) A requirement that Wertz control on the Parcel Corners, or dried-up portions thereof, noxious weeds from "B" and "C" species lists of the Colorado Noxious Weed List, and eradicate from the Parcel Corners, or dried-up portions thereof, any noxious weeds from the "A" species list, as those lists may be amended or replaced from time to time.

- (4) A rehabilitation plan, prepared by an independent qualified expert, for all land areas from which historic irrigation will cease, including the following:
- (a) Description of all lands included;
  - (b) Description of plant and seed material to be used and the method, amounts and timing of their application;
  - (c) Source, amount, timing and seasonal duration of irrigation water to be applied to establish the intended Revegetation, and that such water is available until successful establishment of Revegetation is completed, or such other period as the Permit Authority shall require;
  - (d) Whether the plan is required as a part of any Water Court decree, or Division of Water Resources Rule 14 plan or Substitute Water Supply Plan, and if so whether the plan has been approved by the Water Court, or the Division of Water Resources (include a copy of the decree and plan as so approved);
  - (e) Description of the costs of preparing the soil, seeding and planting vegetation and irrigating the same, costs of removal of noxious weeds and maintaining weed control throughout the applicable Revegetation establishment period, and revising and repeating the Revegetation plan in the event the plan fails in whole or in part; and, as part of the security required by Chapter 5, proposed security to guarantee successful implementation and completion of such Revegetation shall include bonding, based on a minimum presumptive cost of \$750.00 per acre for Rehabilitation plans involving municipal use or more than 160 acres, which presumptive amount may be revised from time to time by the Permit Authority;
  - (f) Description of a continuing monitoring and maintenance plan for implementation following the certification of establishment on the revegetated lands; such description shall include the estimated costs to be incurred in monitoring by the County and the Applicant/Permit Holder as well as the expected costs in maintenance of the revegetation on these fields; and, to the extent a grazing plan is to be implemented, a description of the parameters for utilizing a grazing plan and the compliance procedures must be described;
  - (g) Description of the methods and costs to control and prevent animal species infestations, including without limitation, prairie dogs.

## EXHIBIT D

### Form Return Flow Easement

#### **NON-EXCLUSIVE PERMANENT RETURN FLOW EASEMENT AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Thaddeus Wertz and Sierra Wertz (collectively the "Grantor") who own certain parcels of real property located in Bent County, Colorado, as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Premises"), hereby bargains, sells, grants and conveys to the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation on behalf of its enterprise, Colorado Springs Utilities ("Utilities"), its successors and assigns, a permanent non-exclusive easement (the "Easement") to enter, occupy, and use the portion of the Premises described in **Exhibit B** and graphically depicted by the shaded area in **Exhibit C** (the "Easement Area"), both such exhibits are attached hereto and incorporated herein by this reference, to construct, reconstruct, install, operate, use, maintain, repair, replace, upgrade and/or remove any augmentation stations, headgates, laterals, turnouts, divide boxes, conveyance structures, recharge ponds, monitoring equipment, measuring flumes and/or other facilities and related appurtenances that are necessary, in Utilities' reasonable discretion, to ensure that the water attributable to certain shares in the Fort Lyon Canal Company ("FLCC") owned by Utilities or that Utilities has an interest in that were historically used to irrigate a portion of the Premises can be delivered to the FLCC ditch and/or the Arkansas River and its tributaries, as for municipal use by the City of Colorado Springs and the replacement of historical return flows (the "Improvements"). Utilities and Grantor may be referred to herein collectively as the "Parties" and each individually as a "Party". Such Easement is granted by the Grantor and is accepted by Utilities pursuant to the terms and conditions contained in this Return Flow Easement Agreement (the "Agreement"):

1. Utilities, its agents, successors, and assigns, shall have the perpetual right of reasonable ingress and egress in, to, through, over, under, and across the Premises for access to and from any roads, highways, streets, alleys, or any other point to the Easement Area, in order to perform Utilities' rights in the Easement Area.

2. Utilities shall have the right to survey, construct, install, reconstruct, operate, use, maintain, repair, patrol, replace, upgrade, and remove at any time and from time to time the Improvements, and one more additional Improvements, within the Easement Area and shall further have the right to use the Easement Area for the flow of water to and from the Improvements. Such right shall be perpetual, and Grantor shall not stop, hinder, or impede construction of such additional Improvements or limit the same within the Easement Area. In addition to delivering water attributable to those certain shares in FLCC owned by Utilities or that Utilities has an interest in, Utilities may use the Improvements to deliver any other ground or surface water that Utilities owns or acquires in the future to the FLCC ditch and/or Arkansas River and its tributaries, provided that Utilities does not unreasonably enlarge the burden of the Easement.

3. Except as provided in paragraph 4 below, Grantor shall retain the right to make full use of the Premises, except for such use as might endanger or unreasonably interfere with the rights

of Utilities in the Easement Area. Grantor shall only perform or permit other persons or entities to perform construction or other work within the Easement Area after receiving prior written approval by Utilities and only if such construction or other work is performed in accordance with the terms of this Agreement and all applicable laws, rules, and regulations, as they may be modified from time to time.

4. Grantor shall not modify, relocate, or remove any of the Improvements without the express prior consent of Utilities. Grantor shall not construct or place any permanent structure or building on any part of the Easement Area without Utilities' prior written consent, including, but not limited to: posts, poles, fences (except posts, poles, or fences that can be easily removed and erected again), dwellings, garages, barns, sheds, storage structures of any kind, lean-tos, playhouses, or other play structures, outbuildings, gazebos, hot tubs, swimming pools, concrete patios, decks, basketball/sports courts, retaining walls, permanent or invasive landscaping design features, or any edifice projections such as balconies, verandas, porches, building overhangs, or bay windows. Without liability for damages, Utilities may remove any such structure or building constructed or placed within the Easement Area without Utilities' prior written consent. If Grantor constructs, places, or permits any such structure or building within the Easement Area without Utilities' prior written consent, then Grantor shall reimburse Utilities for all expenses (including, but not limited to, removal, court, collection, and attorneys' fees and costs) associated with or arising from removing such structure or building. Moreover, in no event shall Grantor: (a) construct or place, longitudinally within the Easement Area any tree, underground pipeline, cable, wire, conduit, valve, stub, storm water drainage pipeline facilities, or other utility facility or appurtenance without Utilities' prior written consent; or (b) materially change, by excavation or filling, the present grade or ground level of the Easement Area without the prior written consent of Utilities.

5. Grantor shall prevent the construction or alteration of landfills, wetlands, land excavations, water impoundments including storm water quality features or facilities, and other land uses within the Easement Area by Grantor or other persons acquiring an interest in the Premises unless Utilities has consented to such uses. Additionally, Grantor shall not construct any new or alter any existing landfills, wetlands, water impoundments, and other similar uses within the Easement Area which might, in Utilities' reasonable discretion, unreasonably endanger or interfere with any Improvements or Utilities' rights in the Easement including, but not limited to, Utilities' rights of maintenance and reasonable access, without Utilities' prior written consent.

6. Utilities shall replace, repair, or reimburse Grantor for the reasonable cost of replacement or repair of physical damage to Grantor's improvements on the Premises, whether or not within the Easement Area if and to the extent such damage is caused by Utilities' construction, reconstruction, use, operation, maintenance, repair, patrol, replacement, upgrading, removal, or other use of Utilities' Improvements. In the construction, reconstruction, installation, use, operation, maintenance, repair, patrol, replacement, upgrading, or removal of its Improvements, Utilities shall promptly restore, replace, or repair the surface of the Easement Area to as close to its condition immediately prior to such work as may be reasonably possible. Despite anything contained herein to the contrary, Utilities shall not be liable for damage to, nor shall it be obligated to repair or replace any structures, buildings, or any other articles whatsoever, which are constructed, installed, or otherwise existing within the Easement Area in violation of the terms of

this Agreement including, but not limited to, any tree(s) that interfere with the Improvements or Utilities' rights in the Easement.

7. Grantor shall be responsible for the surface maintenance of the Easement Area; however, Utilities shall have the perpetual right, but not the obligation, to cut, trim, mechanically or chemically control, and remove trees, brush, and other obstructions which unreasonably injure or interfere with Utilities' use, occupation or enjoyment of the Easement Area, or Utilities' right to construct, reconstruct, install, use, operate, maintain, repair, patrol, replace, upgrade, or remove its Improvements, without liability for damages arising therefrom.

8. Grantor, its successors, heirs, and assigns, shall not take any action which would unreasonably impair the lateral or subjacent support for the Improvements.

9. The Easement is perpetual and runs with the land. It also is deemed to touch and concern the land. Utilities' exercise of any rights pursuant to the Easement, other than those retained by Grantor shall be within the sole discretion of Utilities. Utilities shall use the Easement consistent with Utilities' uses described herein.

10. Grantor warrants that it has good and merchantable title to the Premises and has the full right and lawful authority to grant the Easement. Further, Grantor warrants, promises, and agrees to defend Utilities in the exercise of Utilities' rights hereunder against any defect in Grantor's title to the Property or Grantor's right to grant the Easement.

11. Grantor hereby releases Utilities and shall fully protect, defend, indemnify and hold harmless Utilities, the City of Colorado Springs, the Colorado Springs City Council, the Utilities Board of Directors, and their respective officers, employees, agents, and representatives from and against any and all claims, costs, and fees (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs), losses, damages, causes of action, or liability of any nature (including, but not limited to environmental) arising from or in connection with the Easement, Grantor's improvements, or the Improvements to the extent arising from or due to Grantor's action(s) or failure(s) to act.

12. Each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, administrators, successors and assigns of the Grantor and Utilities.

13. This Agreement shall be construed in accordance with the laws of the State of Colorado. In the event of any dispute over this Agreement or its subject matter, the exclusive venue and jurisdiction for any litigation arising hereunder shall be in the District Court of Bent County, Colorado, and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado.

14. The failure of either Party to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants, or agreements herein contained, or the failure of either Party in any one or more instances to exercise any option, privilege, or right herein



contained, shall in no way be construed to constitute a waiver, relinquishment or release of such obligations, covenants, or agreements, and no forbearance by either Party of any default hereunder shall in any manner be construed as constituting a waiver of such default.

15. Except as expressly provided otherwise, this Easement is intended to be solely for the benefit of the Parties and shall not otherwise be deemed to confer upon or give to any other person or third party any remedy, claim, cause of action, or other right.

16. The provisions of this Agreement are severable. Illegality or unenforceability of any provision herein shall not affect the validity or enforceability of the remaining provisions in this Agreement.

17. This Agreement shall be recorded in the real property records of Bent County, Colorado.

18. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

19. Any notice provided in accordance with this Agreement, shall be in writing and shall be sent by delivery service, or mailed by certified mail, postage prepaid, and return receipt requested to either Party's address as shown below or to the property owner of record ("Notice"). Such Notice shall be effective upon the date received and acknowledged by signature of the Party that receives Notice. Either Party may change its address to which any Notice is to be delivered under this Agreement by giving Notice as provided herein.

**To Utilities:**

Colorado Springs Utilities:  
Manager, Water Resources  
P.O. Box 1103, Mail Code 1825  
Colorado Springs, CO 80947

**With a copy to:**

City of Colorado Springs  
Attn. Real Estate Services  
30 S. Nevada Avenue, Suite 502  
Colorado Springs, CO 80903



STATE OF \_\_\_\_\_)

) ss.

COUNTY OF \_\_\_\_\_)

Subscribed and sworn to before me on this \_\_\_\_\_ day of xxxx, 2023, by Sierra Wertz as Grantor.

\_\_\_\_\_

Notary Public

My commission expires \_\_\_\_\_

**THE CITY OF COLORADO SPRINGS, COLORADO  
A HOME RULE CITY AND COLORADO  
MUNICIPAL CORPORATION, ON BEHALF OF  
ITS ENTERPRISE COLORADO SPRINGS UTILITIES**

---

Jessica Davis  
Land Resource Manager  
Colorado Springs Utilities

Date: \_\_\_\_\_

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF EL PASO     )

The foregoing **DRY-UP AND REVEGETATION COVENANTS AND EASEMENT AGREEMENT** Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by Jessica Davis, as Land Resource Manager of Colorado Springs Utilities, an enterprise of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation.

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Notary Public

My commission expires \_\_\_\_\_



**[Form Return Flow Easement Exhibit A]**

**Legal Description of Real Property**

In Section 28, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., the land described as follows:

Beginning at a point 675 feet West of the quarter corner of Sections 28 and 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., thence North 202 feet, to the South side of County Road, thence West along South side of said Road to point 1401 feet West of point of beginning, thence East 1401 feet to a point of beginning, containing 5 acres, more or less, in Lot 3 of Section 28, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., EXCEPT:

All that certain tract of land located in the SE1/4SW1/4 and SW1/4SW1/4 of Section 28, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., in Bent County, Colorado and more particularly described as follows:

Beginning at a point whence the South quarter corner of said Section 28, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., bear South 76°48' East 695.5 feet; thence North 0°40' West 40.0 feet to the South right of way line of the present highway, thence along said South right of way line South 87°30' West 1018.9 feet; thence South 67°55' West along said right of way line 366.6 feet; thence easterly with a 4° curve to the right 489.6 feet (the long chord of said curve bearing North 77°42'33" East 487.3 feet) thence North 87°30' East 882.0 feet, more or less to place of beginning, containing 1.066 acres, more or less.

2. See also exception No. 2 under NW1/4 of Section 33-22-51, this instrument.

In Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., the land described as follows:

The NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., Bent County, Colorado, EXCEPT the following described tracts of land, to-wit:

1. All that certain tract of land located in the NW1/4NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., Bent County and more particularly described as follows: Beginning at a point South 22°05' 5 feet East of a point from whence the NW corner of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., bears South 89°07' West 258.9 feet, thence North 90°00' East 159 feet, thence along North right of way line of the present highway South 67°55' 155 feet, thence North 22°05' West 35 feet, more or less, to the place of beginning, containing 0.062 acres, more or less.
2. All that parcel or piece of land located in the NW1/4NW1/4 of Section 33, and SW1/4SW1/4 of Section 28, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., Bent County, Colorado, being bounded and described as follows: Beginning at a point on the North boundary of said Section 33, whence the NW corner of said Section 33, bears South 89°44' West 279.2 feet; thence North 89°44' East along the North boundary a distance of 243.7 feet, thence North

67°55' East along the South right of way line of the present State Highway, a distance of 422.6 feet, thence North 87°30' East along said right of way line of a distance of 89.5 feet, thence South 67°55' West 754.1 feet, more or less, to a point 60 feet distant from and opposite Station 0+00 of the center line survey for F.A.P. 59 R1; thence North 22°05' West 120 feet to the North right of way line, thence North 67°55' East 16.7 feet, more or less to the point of place of beginning, said piece or parcel of land contains 0.735 acres, more or less, less 0.218 acres, more or less, contained in the present road, leaving 0.517 acres, more or less.

3. A tract of land in Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., more particularly described as follows: Beginning 1055 feet North and 30 feet East from the SW corner of the NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., thence East 160 feet, thence North 160 feet, thence West 160 feet, thence South 160 feet, to the place of beginning, containing approximately .588 acres, more or less.
4. Beginning at a point 675 feet West of the NE corner of NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., thence East 675 feet, thence South 664 feet, thence in a straight line in a Northwesterly direction to a point of beginning, containing 5 acres, more or less, the above described land being situated in the NE1/4NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., Bent County, Colorado.
5. A tract or parcel of land containing 1.109 acres, more or less, in the NW1/4NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., in Bent County, said tract or parcel being more particularly described as follows: Beginning at a point on the West line of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., whence the NW corner of Section 33 bears North 0°19' West, a distance of 322.7 feet;
  - (a) Thence North 67°47' East a distance of 32.3 feet to the East right of way line of State Highway No. 183;
  - (b) Thence North 50°01'30" East a distance of 130.5 feet;
  - (c) Thence North 57°44' East a distance of 282.9 feet;
  - (d) Thence North 67°55' East a distance of 209.5 feet to the North line of Section 33;
  - (e) Thence along the North line of Section 33, South 89°41' West a distance of 161.8 feet to the center of the present road;
  - (f) Thence along the center line of the present road, South 67°55' West, a distance of 434.2 feet to the West line of Section 33;
  - (g) Thence along the West line of Section 33, South 0°19' East a distance of 161.7 feet, more or less, to the point of beginning.

The above-described parcel contains 1.109 acres, more or less, of which 0.589 acres are in the right of way of the present road.

6. That part of the NW1/4NW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., that lies North and West of present U.S. Highway No. 50, containing 1/2 acres, more or less.

SW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., Bent County, Colorado, EXCEPT the following described tracts of land, to-wit:

1. All that part of the SW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., described as follows, to-wit: Beginning at the SW corner of the SW 1/4 of Section 33, for a point of beginning, thence North 130 feet, thence East 205 feet, thence South 130 feet; thence West 205 feet to a point of beginning.
2. Beginning at the SW corner of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup>

P.M., thence North 130 feet for a point of beginning, thence North 190 feet, thence East 385 feet, thence South 320 feet, thence West 180 feet, thence North 130 feet, thence West 205 feet to the point of beginning, containing 2.216 acres, more or less.

3. Starting at a point on the Section line 320 feet North of the SW corner of the SW1/4 of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., thence North 627 feet, thence East 209 feet, thence South 627 feet, thence to point of beginning, being in all 3 acres, more or less.
4. Commencing at the SW corner of Section 33, Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., thence North a distance of 947 feet to a point, which is the point of beginning, thence North 125 feet, thence East 209 feet, thence South 125 feet, thence West 209 feet to the point of beginning.

All being located in Township 22 South, Range 51 West of the 6<sup>th</sup> P.M., Bent County, Colorado, together with 272.9 shares of the capital stock of the Fort Lyon Canal Company and 272.9 shares of the Rixey Mutual Lateral Company and the right to irrigating water and ditch use such ownership entitles the owner together with all irrigating wells, pumps, motors, and other apparatus and wells with Permit Nos. 86823, 20274-S-R and 20274-R.

County of Bent

State of Colorado



**[Form Return Flow Easement Exhibit B]**

**[Form Return Flow Easement Exhibit C]**

Depiction of the Easement Area

**EXHIBIT E**

Form Special Warranty Deed

**SPECIAL WARRANTY DEED  
(WATER RIGHTS)**

**THIS DEED**, made this \_\_\_<sup>th</sup> day of January, 2023, between Thaddeus Wertz and Sierra Wertz (collectively “Grantor”) and the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation, on behalf of its enterprise Colorado Springs Utilities, whose address is P.O. Box 1103, Colorado Springs, CO 80947-1015 (“Grantee”).

**WITNESSETH**, that Grantor, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants, and conveys, to Grantee the following described water rights, as real property and personal property, specifically described as follows:

(a) One eighty (80) of the two hundred seventy two and nine tenths (272.9) shares of capital stock of The Fort Lyon Canal Company, a Colorado nonprofit corporation, (the “Company”), which shares are evidenced by Stock Certificate Number 10350, (the “Shares”); and

(b) All of Grantor's beneficial right, title and interest in and to all water, water rights, ditches, ditch rights, reservoirs, reservoir rights, canals, canal rights, augmentation facilities, headgates and all other assets, rights, title or interests represented by said Shares, and in addition to and in no way limited by the foregoing, any and all other right, title or interest in the Company represented by said Shares, (together, with the Shares, the “Water Rights”).

**TOGETHER** with all and singular, the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title interest, claim, and demand whatsoever of the Grantor, either in law or equity, of, in and to the above-bargained Water Rights, with the hereditaments and appurtenances.

**TO HAVE AND TO HOLD** the said Water Rights above-bargained and described with the appurtenances, unto the Grantee, the Grantee’s successors and assigns forever. And the Grantor **WARRANTS** the title to the above-bargained Water Rights against all and every person or persons claiming the whole or any part thereof, by, through, or under the Grantor.

**Remainder of this page intentionally left blank.**

**IN WITNESS WHEREOF**, the Grantor has executed this **SPECIAL WARRANTY DEED** on the date set forth above.

**GRANTOR:**

\_\_\_\_\_  
Thaddeus Wertz

STATE OF COLORADO)  
  )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing **SPECIAL WARRANTY DEED** was acknowledged before me this \_\_\_\_<sup>th</sup> day of January, 2023 by Thaddeus Wertz.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_

[SEAL]

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Sierra Wertz

STATE OF COLORADO)  
  )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing **SPECIAL WARRANTY DEED** was acknowledged before me this \_\_\_\_<sup>th</sup> day of January, 2023 by Sierra Wertz.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_

[SEAL]

\_\_\_\_\_  
Notary Public

ACCEPTED BY THE BUYER, CITY OF COLORADO SPRINGS, COLORADO  
A HOME RULE CITY AND COLORADO MUNICIPAL CORPORATION  
ON BEHALF OF ITS ENTERPRISE COLORADO SPRINGS UTILITIES

By: \_\_\_\_\_ this \_\_\_<sup>th</sup> day of January, 2023  
Travas Deal, Acting Chief Executive Officer

Approved as to Form:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
City Attorney's Office—Utilities Division

**Exhibit F**

Form of Corner Share Assignments

**STOCK ASSIGNMENT SEPARATE FROM CERTIFICATE**

(The Fort Lyon Canal Company)

THIS STOCK ASSIGNMENT SEPARATE FROM CERTIFICATE (“Assignment”) is made this \_\_\_<sup>th</sup> day of January, 2023, by Thaddeus Wertz and Sierra Wertz (collectively “Seller”), to the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation, on behalf of its enterprise Colorado Springs Utilities, whose address is P.O. Box 1103, Colorado Springs, Colorado, 80947-1015 (“Buyer”). FOR VALUE RECEIVED, Seller hereby sells, assigns and transfers eighty (80) of the two hundred seventy two and nine tenths (272.9) shares of the capital stock of The Fort Lyon Canal Company, a Colorado nonprofit corporation, to Buyer, which stock is outstanding in the name of Seller on the books of The Fort Lyon Canal Company, and represented by Certificate No 10350 (a copy of which is attached), together with all of Seller’s beneficial rights, title, and interest to the property of The Fort Lyon Canal Company represented by said shares, whether inchoate, choate, real or personal. Seller does hereby irrevocably constitute and appoint the Secretary of The Fort Lyon Canal Company as its attorney-in-fact to transfer said stock on the books of The Fort Lyon Canal Company to the Buyer with full power of substitution in the premises.

\_\_\_\_\_  
Thaddeus Wertz

STATE OF COLORADO    )  
  )ss.  
COUNTY \_\_\_\_\_)

The foregoing **STOCK ASSIGNMENT SEPARATE FROM CERTIFICATE** was acknowledged before me this \_\_\_<sup>th</sup> day of January, 2023 by Thaddeus Wertz.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_

[SEAL]

\_\_\_\_\_  
Notary

\_\_\_\_\_  
Sierra Wertz

STATE OF COLORADO    )  
  )ss.  
COUNTY \_\_\_\_\_)

The foregoing **STOCK ASSIGNMENT SEPARATE FROM CERTIFICATE** was acknowledged before me this \_\_\_\_<sup>th</sup> day of January, 2023 by Sierra Wertz.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_

[SEAL]

\_\_\_\_\_  
Notary

ACCEPTED BY THE BUYER, CITY OF COLORADO SPRINGS, COLORADO  
A HOME RULE CITY AND COLORADO MUNICIPAL CORPORATION  
ON BEHALF OF ITS ENTERPRISE COLORADO SPRINGS UTILITIES

By: \_\_\_\_\_ this \_\_\_<sup>th</sup> day of January, 2023  
Travas Deal, Acting Chief Executive Officer

Approved as to Form:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
City Attorney's Office—Utilities Division